

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Case No. 15CR38

Plaintiff,

vs.

December 2, 2015
9:00 a.m.

DAVID W. VICKERS,

Volume 3

Defendant.

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE CHRISTOPHER A. BOYKO
UNITED STATES DISTRICT JUDGE
AND A JURY

APPEARANCES:

For the Government:

Brian McDonough, AUSA
Kevin Filiatraut, AUSA
Office of the U.S. Attorney
Northern District of Ohio
801 West Superior Avenue
400 U.S. Court House
Cleveland, Ohio 44113
(216) 622-3600

For the Defendant:

Greg McCormack, Esq.
Jarrett McCormack, Esq.
McCormack & McCormack
Suite 100
611 Lynnhaven Parkway
Virginia Beach, Virginia 23452
757-463-7224

Court Reporter:

Susan Trischan, RMR, CRR, FCRR
7-189 U.S. Court House
801 West Superior Avenue
Cleveland, Ohio 44113
(216) 357-7087

Proceedings recorded by mechanical stenography.
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1 THE COURT: Please be seated, ladies and
2 gentlemen.

3 Good morning, everyone.

4 THE JURORS: Good morning.

09:13:04 5 MR. GREG McCORMACK: Good morning, Your
6 Honor.

7 THE COURT: You're on cross, Mr. McCormack.

8 MR. GREG McCORMACK: Thank you, Your Honor.
9 Good morning.

09:13:10 10 THE COURT: Good morning.

11 MR. GREG McCORMACK: Good morning, members
12 of the jury.

13 THE JURORS: Good morning.

14 CROSS-EXAMINATION OF MIRANDA HELMICK

09:13:14 15 BY MR. GREG McCORMACK:

16 Q. All right. Investigator Helmick, let's talk a
17 little bit about your training.

18 You said that you started out your law
19 enforcement career in, what, June of 2014?

09:13:26 20 A. That is correct, sir.

21 Q. What did you do before that?

22 A. Before that, I was a stay-at-home mother.

23 Q. All right. So in June, 2014, you started your law
24 enforcement training, and your initial training consisted
09:13:40 25 of what?

1 A. I did go to college and I have an Associate's
2 Degree in police science and digital forensics.

3 After completing the two years at Lorain
4 County Community College located in Elyria, Ohio, I
09:13:57 5 enrolled into the Police Academy also at Lorain County
6 Community College.

7 Q. And that was in June of 2014, I take it, correct?

8 A. No, sir. That was in January of 2014.

9 Q. Okay. And then continue, please.

09:14:13 10 A. And then I went through the Police Academy. I
11 graduated in June of 2014.

12 I took the State test, and passed, and am
13 commissioned as an Ohio peace officer.

14 Q. Okay. And then after that, what happened?

09:14:29 15 A. After that, I became a reserve police officer for
16 the Village of Wakeman, Ohio, and also an auxiliary
17 police officer for the City of Elyria.

18 Q. Okay. And then continue.

19 A. During that time I took several police tests for
09:14:51 20 various cities around this area in Ohio, and I
21 interviewed and obtained the job with Ohio Internet
22 Crimes Against Children task force in September of 2014.

23 Q. All right. Now, once you accepted that position,
24 September, 2014, did you receive additional training?

09:15:11 25 A. Yes, I have, sir.

1 Q. So you started that position in September of 2014,
2 and you started your additional training at that point,
3 correct?

4 A. That is correct, sir.

09:15:18 5 Q. And what did that training consist of?

6 A. I've been to training for undercover chat
7 investigations. I have been to training for interviewing
8 and interrogating techniques. I've been through training
9 for child exploitation, child pornography, as well as for
09:15:43 10 computer forensics such as peer-to-peer software, digital
11 evidence recovery.

12 I've also been to training for tactical
13 search warrant training. And overall, just in general,
14 chat training through the office as well as through OPOTA
09:16:07 15 which is Ohio Peace Officer Training commission.

16 Q. So that's been an ongoing training since you
17 accepted that position with the task force, correct?

18 A. That is correct.

19 Q. So when were you actually released in the field, so
09:16:20 20 to speak, to conduct investigations with the task force?

21 A. I couldn't give you an exact date.

22 I received training from other colleagues
23 at Ohio Internet Crimes Against Children task force from
24 day one that I started.

09:16:38 25 From there, I attended my first training in

1 September of 2014, and every month I go to one to two
2 training classes.

3 So I would say it would probably have been
4 the month after in October of 2014.

09:16:55 5 Q. All right. How many investigations did you
6 actually become involved with before the investigation
7 involving Mr. Vickers?

8 A. I could not give you an exact number on that, sir.

9 Q. All right. Were there any?

09:17:10 10 A. Yes, there was.

11 Q. Okay. So can you give me an estimate? Was it one?

12 A. I would say between five and ten.

13 Q. Between five and ten.

14 All right. Did any of those investigations
09:17:22 15 lead to an arrest before Mr. Vickers?

16 A. Yes, sir.

17 Q. And did you use the same persona involving Traci
18 and Katie in each one of those investigations?

19 A. Yes, sir.

09:17:33 20 Q. All right. And how many of those investigations
21 involved an arrest of somebody before Mr. Vickers?

22 A. All of the cases that I had before Mr. Vickers
23 ended in an arrest.

24 Q. So every one that you were involved with ended in
09:17:49 25 an arrest before Mr. Vickers?

1 A. That is correct, sir.

2 Q. Correct?

3 Now, you say you had specifically training
4 about protocols as to how to conduct these undercover
09:17:57 5 investigations, correct?

6 A. That is correct, sir.

7 Q. And what did that training actually consist of
8 pertaining to protocols as it pertained to how to handle
9 a situation when the person who was a target became
09:18:12 10 interested in you who was posing as the mother of the
11 child?

12 A. I'm sorry, I got a little bit lost in that
13 question.

14 Q. Okay. You said you use the same persona; you, in
09:18:27 15 all these prior investigations, you basically pose as
16 Traci, correct?

17 A. That is correct, sir.

18 Q. And you pose also as Katie, correct?

19 A. That is correct, sir.

09:18:35 20 Q. Did you have any of those investigations encounter
21 a situation where the person involved, the target,
22 developed an interest in you as Traci as occurred in this
23 particular case?

24 A. Yes, sir.

09:18:51 25 Q. Okay. So tell me about the training as to the

1 protocol as to how to handle that situation before you
2 encountered Mr. Vickers.

3 You indicated you had training how to
4 handle that. What did that training consist of?

09:19:07 5 A. It was a general training as far as how to chat
6 undercover.

7 I don't necessarily -- I wouldn't
8 necessarily say it was for that case exactly as you
9 stated.

09:19:21 10 It was taught -- I did receive training as
11 far as how to talk as a child, how to talk as an adult,
12 and also when the focus became on me, I wanted to see if
13 that was truly the focus as in a fantasy or role
14 playing-type situation, or if it was a real attachment to
09:19:52 15 myself as an adult mother.

16 Q. All right. Well, that's what I'm asking, ma'am.

17 Did you have training as to how to handle
18 this, or were you pretty much on your own in figuring out
19 how to handle this?

09:20:03 20 A. After going through the training, we are allowed to
21 chat as we see fit.

22 And during the entire process of a chatting
23 case, in this instance my chats are reviewed by my
24 supervisor as well as two prosecutors assigned to our
09:20:21 25 task force.

1 Q. So you're telling me that all these chats which we
2 have seen -- the jury's going to see the actual full
3 scope of the chats in this case, but Mr. McDonough has
4 shown the jury quite a bit of it -- your supervisor has
09:20:36 5 seen and approved all these chats?

6 Is that what you're telling us?

7 A. Yes, he has, sir.

8 Q. All right. And are you telling us that throughout
9 the course of this investigation, a prosecution team or
09:20:47 10 at least a prosecutor reviewed these chats, all the way
11 through, correct?

12 A. That is correct, sir.

13 Q. Okay. Would this be a state or federal prosecutor?

14 A. State.

09:20:54 15 Q. All right. And you say that you pretty much, you
16 have some training but you were able to handle this as
17 you see fit, correct?

18 A. That is correct.

19 Q. But you indicated to Mr. McDonough that you had
09:21:06 20 training as to giving the suspect or the target an option
21 out, a way out at some particular point, correct?

22 A. That is correct, sir.

23 Q. Why was that?

24 A. In the chat training that I had received, it is
09:21:23 25 talked about to give a target, as you call it, an out

1 meaning you give them an opportunity to bow out of the
2 conversation, to cut ties and no longer go forward with
3 the chatting.

4 Q. Okay. Is any part of your training or your
09:21:44 5 protocol in these types of cases designed to entice the
6 target to be sexually interested in you in your role as a
7 mother?

8 I would assume not, correct?

9 A. No, sir.

09:21:56 10 Q. Okay. So that is correct, so you're not in any
11 manner trained in this entire program, it is not in any
12 manner designed to entice the target to be sexually
13 interested in you as Traci?

14 That's pretty much taboo, you're not
09:22:17 15 supposed to be doing that, correct?

16 A. I would say I can't control how somebody feels
17 about my persona.

18 Q. True. I understand that. But you would agree as a
19 law enforcement officer, you certainly should not be
09:22:33 20 attempting to entice the target to be sexually interested
21 in you as Traci, would you agree with that?

22 A. I put forward chats and pictures as I see fit, and
23 that goes along with the investigation.

24 I -- I try to chat and send pictures that
09:22:58 25 are in kind and in like the other person.

1 Q. I understand that.

2 Now, can you try answering my question? My
3 question is as a law enforcement officer, you
4 specifically should not be attempting to entice the
09:23:13 5 target to be sexually interested in you.

6 Do you agree with that?

7 A. I do not entice anybody.

8 Q. So the answer is correct, you agree that as a law
9 enforcement officer you should not be specifically trying
09:23:25 10 to entice the suspect to be sexually interested in you?

11 Do you agree with that, yes or no?

12 A. Yes.

13 Q. All right. Thank you.

14 And did your supervisor ever discuss that
09:23:37 15 with you, that, "Hey, wait a minute, Traci, now, you
16 should not be trying to sexually entice this man, David
17 Vickers, to be sexually interested in you"?

18 Did he ever discuss this with you?

19 A. No, sir.

09:23:48 20 Q. Did he ever discuss with you, "Traci, now, you're
21 probably going too far with this case, you're really
22 enticing this man to be sexually interested in you"?

23 Did your supervisor ever do that to you?

24 A. No, sir.

09:23:59 25 Q. All right. And you're sure he read these chats?

1 A. Yes, sir.

2 Q. All right. Now, when you say you have a protocol
3 for giving the individual the option out, do you agree
4 that once you give him an option out, that you should not
09:24:23 5 continually keep trying to draw him back in?

6 Do you agree with that?

7 A. I give the out, and if they decide to come back,
8 that's on them.

9 I leave it very open-ended. I never want
09:24:37 10 to force anyone to do something that they're not wanting
11 or willing to do.

12 Q. I agree. But do you agree that you should not be
13 trying to goad, literally goad the suspect into
14 committing these types of acts?

09:24:52 15 Do you agree with that?

16 A. I do not goad anybody.

17 Q. You did not goad anybody.

18 Okay. So you did not call him names like,
19 "You're a pussy if you don't do this"?

09:25:02 20 You didn't do that, did you?

21 A. I responded in the same fashion that was through
22 the history of the chatting.

23 Q. All right. Do you deny calling him a pussy if he
24 didn't do this?

09:25:13 25 A. No, I don't.

1 Q. So you did that? You called him a pussy if he
2 didn't do this, correct?

3 A. That's correct, sir.

4 Q. Okay. We'll go over that in a second.

09:25:28 5 Now, you indicated, when the prosecutor
6 talked to you about giving him an option out, that the
7 reason for doing this was because you were concerned that
8 with these wink wink comments that he was making to you,
9 and I'm going to show you prosecution Exhibit 36 -- I'm
09:25:58 10 sorry -- Prosecution 20, Government's Exhibit 20,
11 Page 36.

12 And specifically, and I've taken the
13 liberty of highlighting it, you can see where I have
14 "Wink wink" highlighted?

09:26:14 15 A. Yes, sir.

16 Q. Here and down here.

17 What were your concerns with that?

18 A. Honestly, I was a bit confused about the
19 conversation. I didn't know what exactly the wink wink
09:26:25 20 meant, and that's why I requested the phone call, to
21 understand what was being said because it was different
22 from all of the other communications that we had had
23 previous to this conversation.

24 Q. Right. And he, as I have highlighted here, he has
09:26:45 25 some comments here about, "Let's be 100% clear, you told

1 me yesterday you have 0% interest in a sexual thing
2 between me and you?" And then you have before and after
3 that the wink wink and wink wink.

4 And your testimony yesterday on direct
09:27:02 5 examination was that you considered that to be sarcasm?

6 A. That is correct, sir.

7 Q. A sarcastic statement.

8 In what respect did you consider that to be
9 sarcastic?

09:27:14 10 A. As far as the second one you have highlighted where
11 it says, "And let's be 100% clear, you told me yesterday
12 you have a 0% interest in a sexual thing between me and
13 you, wink wink," I took that as to be sarcastic.

14 He -- he was thinking that I had an
09:27:38 15 interest, a sexual interest in him, and that's why he
16 said, "You have a 0% interest in a sexual thing, wink
17 wink," meaning the opposite.

18 And I told him, "Right now, correct" in
19 regards to having a 0% interest in a sexual thing between
09:27:59 20 him and myself.

21 Q. And what do you mean by "Right now"?

22 In other words, you're saying again "Right
23 now" meaning you were pretty much indicating to him,
24 "Well, if you do what I'm asking you to do with Katie,
09:28:15 25 there could be some sexual interest down the road," is

1 what you're basically saying to him, correct?

2 A. That's incorrect, sir.

3 Q. That's incorrect?

4 A. That's incorrect.

09:28:22 5 Q. Are you testifying that you were not leading him
6 throughout all these chat conversations that basically
7 the goal right now is, "Listen, you need to link up with
8 Katie, then there can be some sexual activity with us
9 down the road"?

09:28:37 10 Are you denying that?

11 A. What I'm saying, sir, is --

12 Q. Please answer my question.

13 Are you denying that?

14 A. I am denying that.

09:28:42 15 Q. Okay. So you're denying under oath that you did
16 not lead this man to believe that if he did not meet your
17 immediate goal of engaging in this breeding of Katie,
18 that you would potentially engage in sexual activity with
19 him down the road?

09:28:56 20 You deny that under oath, correct?

21 A. Yes, I do, sir.

22 Q. Okay. Showing you now Page 37 of Prosecution
23 Exhibit 20, and again this is just a continuation of the
24 page we just saw, he's continuing now "Cause you're a
09:29:17 25 good girl that likes to make a guy wait for a long time

1 and I get and respect your virgin values. Get it?

2 Ha-ha. Yes."

3 Now, in fact, here what you're doing is
4 you're just kind of -- you're kind of goading him, you're
09:29:31 5 kind of playing along with him basically indicating,
6 "Hey, right now it's Katie, but down the road there could
7 be something going on between you and me," that's
8 basically what you're saying to him, aren't you?

9 A. That's incorrect, sir.

09:29:44 10 Q. That's -- okay. You deny that?

11 A. I do deny that.

12 Q. All right. And he's telling you right here that,
13 "Cause all that talk before was just fantasy talk, at
14 least on my end. How about you?"

09:29:54 15 And then he gives you the wink wink, okay,
16 because this is what he needs to say to keep this
17 scenario going between you and him, correct, or else
18 you're going to cut him off, correct?

19 A. That's incorrect, sir.

09:30:10 20 Q. That's incorrect.

21 Then he keeps on going down at the bottom
22 here and says, "I thought you were serious about all that
23 stuff before" and we got another "Wink wink."

24 So I mean, as an investigator, you know
09:30:33 25 because of all your training with your experience of

1 what -- how much experience you got here, two months'
2 experience as an investigator in these types of cases,
3 two months?

4 A. Yes, sir.

09:30:43 5 Q. Okay. Two months' investigating experience in
6 working these types of cases and you know, you're
7 concerned enough to know this guy really wants you, he
8 wants to have sex with you, correct?

9 You know that, correct?

09:30:57 10 A. I wasn't sure completely at that time what his
11 intention was.

12 Q. Okay. But you certainly had that concern in your
13 mind, correct?

14 A. Correct, sir.

09:31:06 15 Q. Do you go to talk to your supervisor at this point
16 and say, "Hey, boss, I have a major problem on my hands
17 here, I need to shut this thing down"?

18 A. No, sir.

19 Q. You don't? Okay.

09:31:17 20 But you have enough of concern, because the
21 prosecutor asked you about this, that you feel you need
22 to give him this option out at this point, correct?

23 Because on Page 40, this is what the
24 prosecutor was talking to you about, again I'm showing
09:31:34 25 you Government's Exhibit 20, Page 40.

1 This is exactly what the government was
2 talking to you about because he continues, "I want to be
3 with you so bad."

4 He's making it very clear to you,
09:31:46 5 Investigator Helmick, he wants to be with you, correct?

6 A. That is correct, sir.

7 Q. So right there now black and white he's making it
8 very clear his interest is you, correct?

9 A. At this point he --

09:32:02 10 Q. At this point. Okay. "You're just super amazing,
11 I don't want to lose you," correct?

12 A. That is correct, sir.

13 Q. Now, here with your investigative knowledge and
14 experience of how long? Two months?

09:32:20 15 A. That's correct, sir.

16 Q. Okay. You come back and you realize you have a
17 major issue on your hands, Investigator, and you say, "I
18 think I've clouded your wants and desires. I pushed
19 Katie on you and I'm sorry for that. You said all that
09:32:32 20 stuff you were gonna do with her, but I don't."

21 All right. And you continue, "I think
22 you're into me."

23 Investigator, you know what, with two
24 months' experience, you hit that right on the head,
09:32:43 25 didn't you?

1 A. Yes, I did, sir.

2 Q. Okay. And you just said whatever you thought I
3 wanted to hear and you said with two months' experience,
4 Investigator, you hit that right on the head, didn't you?

09:32:56 5 A. Yes, I did, sir.

6 Q. Okay. So as the prosecutor indicated, now you know
7 you need to give this man the option out, correct?

8 A. That is correct, sir.

9 Q. And at this particular point, you realize, don't
09:33:10 10 you, it's time to shut this thing down, correct?

11 A. I gave him an out.

12 Q. You gave him the out.

13 Did you go to your boss and say, "Hey,
14 boss, I got a problem"?

09:33:19 15 A. No, sir, I did not.

16 Q. No. Now, with two months' worth of experience, did
17 you not think that -- well, first of all, had you ever
18 experienced this situation in your two months' worth of
19 law enforcement experience, had you ever encountered this
09:33:33 20 situation before?

21 A. Yes, sir, I had.

22 Q. This exact situation?

23 A. Yes, sir, I had.

24 Q. All right. Did you go to your boss at that time
09:33:40 25 and ask your boss the situation?

1 A. I turn in my chats on a daily basis so my boss can
2 review the chats.

3 Q. Okay. So you're telling me under oath that on the
4 day you received this chat, you showed this chat to your
09:33:55 5 boss, is that correct?

6 A. Yes, sir, it is.

7 Q. Okay. So you and your boss reviewed this chat when
8 it happened?

9 A. We did not review it together.

09:34:03 10 Q. You did not review it together.

11 So how do you know your boss saw this and
12 actually evaluated this situation?

13 A. The protocol in my department is to submit my chats
14 for review, and if there is an issue, my boss would talk
09:34:20 15 to me about it.

16 Q. Okay.

17 A. If there's not, it -- it --

18 Q. So you're telling this jury that the manner that
19 your office operated was your boss -- that you of two
09:34:32 20 months' worth of experience make decisions as to whether
21 to turn this thing down or not, turn this thing off or
22 not, turn this federal investigation off or not with two
23 months' worth of experience?

24 Your boss lets you make that decision?

09:34:46 25 A. There's other investigators in the office.

1 Q. Okay.

2 A. And --

3 Q. So other investigators reviewed this chat?

4 A. We talk about our cases in the office.

09:34:53 5 Q. Okay. Tell me the names of the other investigators
6 you specifically discussed this page of this chat with at
7 this time.

8 A. I do not remember, sir.

9 Q. Well, okay, ma'am, you're under oath.

09:35:02 10 Did you discuss this chat, this page, with
11 these other investigators, yes or no?

12 A. I -- I don't know.

13 Q. Okay. Well, I mean, you were so concerned with
14 this because you knew you had a major problem. I mean,
09:35:19 15 this is a major situation you've got here. Okay?

16 Did you or did you not discuss this with
17 other investigators, yes or no?

18 A. I don't know, sir.

19 Q. You don't know.

09:35:28 20 All right. Then why did you bother telling
21 us there's other investigators in the office?

22 A. Because --

23 Q. What was the purpose of that?

24 A. It's the general practice when we are chatting, we
09:35:38 25 talk about our cases in general.

1 Q. Okay.

2 A. I don't know if specifically in this case I talked
3 about this particular chat.

4 Q. Okay. So you're in this -- you're in this trial,
09:35:50 5 you're telling us what the general practices are, that
6 you discuss your cases in general, you bring that up in
7 front of this jury, but now you're telling us you can't
8 tell us whether or not you did that, correct?

9 A. I don't know if I did in this case, sir.

09:36:04 10 Q. Pardon me?

11 A. I don't know if I did in this case.

12 Q. Okay. Now, you say you've run into this exact
13 situation with another one of the people involved with
14 this exact scenario involving you and Katie, so this
09:36:21 15 would be one of the other daddies that you referred to in
16 the chats with Mr. Vickers?

17 A. That is correct, sir.

18 Q. That's correct. Okay.

19 So you go on with Mr. Vickers here and you
09:36:38 20 tell him, which is exactly right on point again, that you
21 are the one who suggested the breeding of Katie, not him,
22 correct?

23 You're the one who put this idea in his
24 mind; he didn't certainly raise this, correct?

09:36:51 25 A. I mentioned breeding based off of the interest on

1 his profile when we first met.

2 Q. Okay. Ma'am, answer my question.

3 You were the one who suggested the breeding
4 of Katie; not him, correct?

09:37:01 5 A. Correct.

6 Q. And his response was, "I would do that if you
7 want," correct?

8 A. That's correct, sir.

9 Q. Okay. Now, as you testified to the prosecution,
09:37:23 10 you said that you gave him this option out at that
11 particular point.

12 Now, on direct examination, I never heard
13 anything else about giving him any options out; that this
14 was the only one that he apparently at that point just
09:37:38 15 never indicated you never gave him any other options out.
16 He never indicated any other hesitations at all.

17 You never testified about that on direct
18 examination, did you?

19 A. I did not testify about that.

09:37:49 20 Q. Right. Okay. So without cross-examination, the
21 jury would have the belief that there was never any other
22 reservations by Mr. Vickers, correct?

23 That's simply not the case, is it?

24 A. I gave him several other outs.

09:38:03 25 Q. Well, I know you did, but we didn't hear about that

1 on direct examination, did we?

2 A. That's correct, sir, we did not.

3 Q. Okay. All right. Because when we go to Page 46,
4 obviously there's again Exhibit 20, there's some
09:38:34 5 discussions on Page 46 about him coming up there or not,
6 and there's discussions where you're saying, "It's on you
7 whether you come or not. I just want to be clear that
8 you're coming and it's not for me or the things I pushed
9 on you."

09:38:49 10 Okay. So again there's -- again there's
11 more discussion involving the -- and again the jury is
12 going to get this entire package and I'm not going to go
13 over and do what we saw yesterday and go page-by-page or
14 line-by-line on this thing -- but right here we have
09:39:05 15 discussions that you're raising a concern again, you
16 again have a concern that what's going on here after you
17 had that option out that you gave him six pages ago, that
18 he still is leading you to be concerned that he's talking
19 about coming up for you and not for Katie, correct?

09:39:25 20 A. That's correct, sir.

21 Q. Okay. So even though you satisfy your concern six
22 pages ago, ah, things are still out there as an
23 investigator, you know, something's not right here, this
24 guy's interested in you; not Katie. Correct?

09:39:45 25 A. At this point, yes.

1 Q. Okay. But yet you just keep on chugging along with
2 this investigation, don't you?

3 Do you go to your boss and say, "Hey, boss,
4 you know, I tried this the other day and it just keeps on
09:40:01 5 going here"?

6 A. Your client kept --

7 Q. Pardon me?

8 A. Your client kept chatting and so I continued to
9 chat.

09:40:10 10 Q. Right. You just keep on going even though you're
11 still concerned he's more interested in you than Katie,
12 correct?

13 A. Yeah, I kept the investigation going, yes, sir.

14 Q. All right. Now, again we talk about your goal as
09:40:32 15 an investigator is not to try to entice this man to be
16 sexually interested in you, correct?

17 So when he's asking for pictures of you,
18 you have control over what pictures you send to him,
19 correct?

09:40:45 20 A. That's correct, sir.

21 Q. Okay. You certainly don't have to send him
22 sexually provocative pictures at all, do you?

23 A. I don't have to, no.

24 Q. No. You decide what pictures you send him,
09:40:55 25 correct?

1 Correct?

2 A. I send pictures based off of requests.

3 Q. Okay. You decide what pictures to send him,
4 correct?

09:41:00 5 A. That's correct, sir.

6 Q. Okay. So you decide to send him that picture,
7 correct?

8 A. Yes, sir.

9 Q. Show you Government's Exhibit 9, Page 8, okay.

09:41:11 10 Do you consider that to be a sexually
11 provocative picture?

12 A. No, sir.

13 Q. You don't. Okay. All right. And you made
14 reference, that's a picture of you, correct?

09:41:20 15 A. That's correct, sir.

16 Q. That you took of yourself when?

17 A. It would have been the summer -- sometime in the
18 summer of 2014 while I was camping.

19 Q. Okay. Now, although you may not consider that a
09:41:35 20 sexually provocative picture, did you get a response from
21 Mr. Vickers that you would consider, whew, he may be
22 sexually provoked by that?

23 A. I don't remember what he said, if you can move that
24 up.

09:41:49 25 Q. Does that refresh your recollection a little bit?

1 A. Yes.

2 Q. Okay. Does that indicate he may be sexually
3 provoked by that? "Wow, you're hot."

4 A. He stated that I was attractive.

09:41:59 5 Q. Okay. Right. So that indicates that he feels
6 you're attractive, correct?

7 A. That's correct, sir.

8 Q. Now, when you see that and you start seeing these
9 assorted responses that we've talked about, and again
09:42:12 10 we're not going to go through them all, but you see these
11 assorted responses and the jury is going to have the
12 option of going through this, you very clearly and based
13 upon your responses of cross-examination and so forth,
14 you see this man has the hots for you, correct?

09:42:26 15 A. Correct.

16 Q. Okay. And when he asked for an additional picture
17 of you, the jury has seen this in my opening statement,
18 Government Exhibit 9, Page 24, some guys may think that's
19 pretty sexually provocative, too, and obviously
09:42:51 20 Mr. Vickers certainly thinks that is, "Oh, my God, you're
21 hot," correct?

22 A. He did say that, yes.

23 Q. Okay. And then I understand he asked you for a
24 picture of you in your, what, your underwear?

09:43:06 25 A. My bra and underwear.

1 Q. Okay. Now, at some particular point, you're a law
2 enforcement officer, you have to draw the line, correct?

3 Correct? As to what you're giving the man?

4 A. I don't understand what you're asking.

09:43:22 5 Q. You're not going to send him a picture of your bra
6 and underwear, correct?

7 A. I am allowed to do that, yes, sir.

8 Q. You are allowed to do that.

9 Now, why from a law enforcement
09:43:32 10 perspective, if the goal here is to get a person, a
11 suspect, a target interested in a child, to see if he's
12 going to be enticing a child, why is the government using
13 or trying to use sexy attractive mother photographs?

14 What's the purpose of that?

09:43:51 15 Why not take a photograph of a law
16 enforcement officer dressed like you're dressed right
17 now? Why go to the extent of using pictures that are in
18 any manner sexy or provocative? Why do anything other
19 than that?

09:44:07 20 A. It's, if I sent a picture of myself dressed like
21 this, and talked in a certain manner, right away somebody
22 would say that, "Oh, you're a law enforcement officer."

23 Q. Okay. So but you feel it's necessary to send him
24 something like this, and I'm showing you now Defendant's
09:44:36 25 Exhibit Alpha, correct?

1 A. What was the question, sir?

2 Q. So what you feel is necessary to satisfy his
3 desires, so to speak, is to send him Defendant's Exhibit
4 Alpha, correct?

09:44:46 5 A. I sent this after the request, also to make sure to
6 convey that I was a real person because there was a
7 question about whether or not I was even a female.

8 There was discussion about "I thought you
9 were a male, you know, you're not real."

09:45:05 10 Q. Okay. So you want to send this to show him that
11 you're not a male?

12 A. And after the request, yes.

13 Q. Okay. And do you think that he might be sexually
14 attracted to this photograph?

09:45:18 15 A. I'm not sure.

16 Q. You're not sure?

17 A. I'm not sure.

18 Q. Is that your answer? Your answer is that you don't
19 think he's going to be sexually attracted to this
09:45:27 20 photograph?

21 THE COURT: She can't answer for him so
22 that's her answer.

23 MR. GREG McCORMACK: Yes, sir.

24 BY MR. GREG McCORMACK:

09:45:37 25 Q. You know for a fact from his responses throughout

1 the entire chat conversations that he was, in fact,
2 sexually attracted to this photograph, correct?

3 A. To this photograph?

4 Q. Yes.

09:45:48 5 A. I don't remember if there was a response after this
6 photograph.

7 Q. All right. The jury will have that picture, okay?

8 Throughout the entire scope of the
9 communication between you and Mr. Vickers, he referred to
09:46:07 10 you on numerous occasions as being sexy or attractive,
11 correct?

12 A. I'm not sure what you're referring to, like the
13 wording or --

14 Q. All right. Ma'am, with regards to the wording, he
09:46:21 15 referred on numerous occasions to being sexually
16 attracted to you, did he not?

17 A. As we saw previously, he said, "Oh, my God, you're
18 hot."

19 Q. Okay.

09:46:31 20 A. So if you --

21 Q. Again, regards to wording, he referred on numerous
22 occasions to being sexually attracted to you, correct?

23 A. I don't know, sir.

24 Q. You don't know. He, on numerous occasions,
09:46:42 25 referred to wanting to be sexually involved with you,

1 correct?

2 A. I don't -- I'm very sorry, I don't know what you're
3 referring to.

4 Q. Okay. So your recollection now is, and I'm sure
09:47:02 5 you reviewed these chats before you testified here,
6 correct?

7 A. That is correct, sir.

8 Q. So your testimony now, after reviewing these chats
9 and I'm sure with the prosecutor and reviewing them in
09:47:14 10 your own personal time, is you're not willing to admit
11 that throughout these conversations with Mr. Vickers,
12 that he was sexually attracted to you?

13 Is that your testimony under oath?

14 MR. McDONOUGH: Objection.

09:47:30 15 THE COURT: Here's the question.

16 Do you believe he was sexually attracted to
17 you?

18 THE WITNESS: I do believe he was attracted
19 to my appearance.

09:47:42 20 BY MR. GREG McCORMACK:

21 Q. All right. Do you believe that Mr. Vickers wanted
22 to engage in sexual relations with you based upon the
23 communications that you had received from him in these
24 assorted chat conversations and the communications you
09:47:58 25 had received from him?

1 A. I do not believe in the actual act of sex.
2 Possibly being undressed and involved in a capacity as
3 being a spectator or helping, but not in the actual act
4 of sex.

09:48:16 5 Q. Okay. So what you want this jury to take back into
6 deliberations is that you don't believe that Mr. Vickers
7 was interested in engaging in sexual activity with you?

8 That's what you want this jury to believe
9 and take into deliberations, correct?

09:48:30 10 A. Based off of the chats that we had, I --

11 Q. Okay. That's fine.

12 That's fair with me.

13 Now, you also at some point sent
14 Mr. Vickers pictures of Katie, correct?

09:48:46 15 A. That's correct, sir.

16 Q. Showing you Defendant's Exhibit B. Okay. That I
17 understand is a photograph actually of yourself, correct?

18 A. That is correct, sir.

19 Q. And that photograph is a photograph of you when you
09:49:02 20 were how old?

21 A. I couldn't give you the exact age.

22 Q. Approximately. I understand that.

23 A. Approximately between 12 and 14. It's a school
24 picture.

09:49:10 25 Q. All right. Do you know how many pictures you sent

1 of Katie to Mr. Vickers?

2 A. I would say three to four.

3 Q. Okay. I believe it's a total of three. Let me
4 just show you the ones that I have received.

09:49:37 5 I'm going to show you Defense Exhibit C,
6 Charlie.

7 Is that a picture of you?

8 A. Yes, it is, sir.

9 Q. Okay. And what is that a picture of?

09:49:48 10 You will obviously tell us when that
11 picture was taken, approximately; I understand that.

12 A. I would say approximately between the ages of 12
13 and 14.

14 I was in The Nutcracker. I used to do
09:49:57 15 ballet, and it was a professional picture for The
16 Nutcracker.

17 Q. Okay. And tell me approximately what year that
18 photograph approximately would have been taken.

19 A. I would have been between the ages of 12 and 14.

09:50:09 20 Q. Okay. Which would have been approximately what
21 year?

22 A. I'm trying to do math now.

23 I'm 33 years old. I can't give you the
24 year off the top of my head.

09:50:26 25 Q. So approximately 19 years ago?

1 A. I would say approximately 19 years ago.

2 Q. Okay. And I only have one other photograph, so and
3 this is Defendant's Exhibit Delta.

4 Did you send that photograph?

09:50:45 5 A. Yes, I did.

6 Q. Okay. And what is that a photograph of?

7 A. Again I was approximately between the ages of 12
8 and 14. I used to roller skate and compete, and this was
9 a skating competition where I won a trophy for my skating
10 routine.

11 Q. Okay. And did you intentionally crop the head off
12 of that photograph?

13 A. I believe when it was sent, the view here it looks
14 cropped, but if you, like, click on the picture, the
09:51:16 15 entire picture would be shown and you would see my face.

16 Q. All right. Now, if you bear with me, I'm going to
17 go through some additional pages that were sent just to
18 go over things where he was asking about getting some
19 additional pictures of information about Katie and you,
09:51:41 20 and then also indicating interest in you.

21 We're just going to do that very briefly.
22 Won't take too much time.

23 I'm going to show you Government Exhibit
24 20, Page 53. All right. And in this particular page,
09:51:59 25 this is where you're indicating at this particular point

1 that again you're talking about obviously there was
2 discussions here about him coming up, and then I mean
3 there were several occasions where he discussed coming up
4 to see you, correct?

09:52:18 5 A. That is correct, sir.

6 Q. And this is one time where apparently he pulled out
7 and decided not to come up and you're making reference
8 that "I figured. You're just like the other guys. I
9 didn't want to get my hopes up again."

09:52:32 10 All right. So here's the situation where
11 he indicated that, you know, he's really, you know, he's
12 not going to come up and so you're kind of -- I mean,
13 you're in effect goading him a little bit here, "Well,
14 you're not going to come up, you're just like the other
09:52:48 15 guys."

16 You're kind of goading him, are you not?

17 A. I would not agree with that statement.

18 Q. Okay. That's fine. All right. And he's indicated
19 here, he's questioning about whether or not you were
09:53:02 20 real, and then I guess maybe you would say here you're
21 kind of telling him good luck to you at that point.

22 But again on Page 53, you're making once
23 again the comment about you put these ideas in his head.

24 "I feel you get attached to me. I would say you do
09:53:22 25 things with Katie that you really didn't want to do and

1 that's why I pulled away, I want you to be honest with
2 yourself and me."

3 And on Page 77, he's telling you that he
4 wants to see pics of you guys together so again he's
09:53:44 5 questioning the veracity, you know, whether you two are
6 actually real or Katie is actually real.

7 He's asking again "Can you send a picture
8 of the two of you together?" Common theme throughout,
9 he's asking for verification that Katie is a real person,
09:54:03 10 correct?

11 A. Correct.

12 Q. All right. And this is interesting, Page 82. This
13 is one I had in my PowerPoint at opening where he's
14 telling you that he had second thoughts and he didn't
09:54:31 15 think he could morally do this, so he's basically telling
16 you, you know, "I'm cutting this thing off, you know,
17 I'm" -- he is cutting this thing off, and he's telling
18 you, "I think I was trying to get with you more than
19 anything, but the more I wrap my brain around it I was
09:54:46 20 saying and doing things that weren't true to myself. I
21 was just trying to impress you instead. Most of the
22 things I said weren't true after all."

23 And your response as an investigator with
24 two months of experience, "I knew you were like the last
09:55:01 25 guy. You're an asshole."

1 Okay. So does that fit within your
2 protocol?

3 The target is telling you, "I'm done, you
4 know, I can't do what you want me to do," this Traci, who
09:55:14 5 is actually an investigator with two months' worth of
6 experience, "I'm done with this," and your response is,
7 "Awesome. I knew you were like the last guy. You're an
8 asshole," Mr. Vickers.

9 So tell me, is that within your training
09:55:28 10 protocol? Is it?

11 A. Is what in my training protocol?

12 Q. Is that within your training protocol? The target
13 tells you, "I'm done, I can't do what you want me to do
14 with this kid, with Katie, who I don't even think is
09:55:43 15 real, I'm done with this, Ms. Investigator or Traci or
16 whoever you are, I'm done," so I'm asking you was that
17 within your training protocol to say, "I knew you were
18 like the last guy. You're an asshole."

19 A. It was within a normal conversation between two
09:56:03 20 people. It was just a continuation and a reaction of a
21 statement that was made.

22 Q. Well, aren't you, in fact, trying to goad him into
23 continuing this?

24 A. No, sir.

09:56:14 25 Q. So you're not? You deny that you were trying to

1 goad him into continuing this?

2 He's telling you he's done, I mean is that
3 very clear here?

4 A. Yes, sir.

09:56:23 5 Q. Okay. So you agree on Page 82, your target is
6 telling you he's done with you and Katie, correct?

7 A. Correct.

8 Q. Okay. And then you don't let that go and you now
9 are calling him an asshole, do you agree, correct?

09:56:41 10 A. I did call him an asshole.

11 Q. Okay. And do you agree you're trying to goad him
12 into continuing?

13 A. I was not goading him to continuing.

14 Q. Okay. So do you agree if you said, "Fine, goodbye,
09:56:54 15 I agree, we're done," it would be over, we would not be
16 here?

17 Do you agree with that?

18 A. I did end it many times.

19 Q. Okay. Do you agree if when he, after he said what
09:57:09 20 he said in this paragraph right here, if you said

21 "Goodbye," we would not be here, do you agree with that?

22 A. My statement where I said, "Awesome, I knew you
23 were like the last guy, you're an asshole," was a final
24 statement --

09:57:28 25 Q. Okay.

1 A. -- on my part.

2 Q. Okay. Can you please answer my question?

3 Okay. You testified that he was telling
4 you he was done with you, correct?

09:57:39 5 A. Correct.

6 Q. Okay. If you said nothing in response except
7 "Goodbye," do you agree, Investigator Helmick, we would
8 not be here today?

9 A. I can't answer that. I don't know.

09:57:53 10 Q. If you did not respond, okay, and there was no
11 further communications, do you agree we would not be here
12 today?

13 THE COURT: She can't answer, she said. It
14 would be speculation.

09:58:04 15 MR. GREG McCORMACK: Yes, Your Honor.

16 THE COURT: Your objection, Mr. McDonough,
17 is sustained.

18 MR. McDONOUGH: Yes.

19 BY MR. GREG McCORMACK:

09:58:10 20 Q. All right. Now, it doesn't stop there because we
21 go to the next page and here's what we talked about
22 before, because you go on and you say, "You're jacking me
23 around and I don't appreciate it. I'll send the picture
24 and you won't come. You've just been fantasizing and
09:58:43 25 jacking off this whole time, haven't you? But when it

1 comes time to follow through, you're a big pussy."

2 All right. Now, this whole Experience
3 Project, I mean, we've talked about that briefly, you
4 talked about it.

09:59:00 5 I mean, part of that's I mean it's
6 experiencing, it's people's experience, part of it can be
7 role playing, actual, fantasizing; we just don't know,
8 correct?

9 A. Correct. I don't know.

09:59:13 10 Q. Okay. And here he's -- you are specifically
11 saying, "You've just been fantasizing and jacking off,"
12 but then you called him an asshole isn't enough for you,
13 then you turn around and tell him, "You're a big pussy,"
14 correct?

09:59:33 15 A. Correct, sir.

16 Q. Okay. And again I'm sure you're not going to say
17 you're not goading him to try to come back, actually
18 you're not goading him to come back into this, are you?

19 A. That's correct, sir. This was another final
09:59:46 20 statement.

21 Q. "And you keep calling me names and you'll get me
22 there."

23 You see the additional comments.

24 Then it continues. Again he expresses
10:00:29 25 doubt as to who he's dealing with as to whether Katie is

1 real. It says, "I've never seen the pictures of the two
2 of you together. I've never talked to her on the phone."

3 MR. GREG McCORMACK: That's on Page 104,
4 I'm sorry, Your Honor, of Government Exhibit 20.

10:00:56 5 Q. Page 105, Government Exhibit 20, he's -- again he's
6 asked for one simple recent picture of the two of you
7 together.

8 Again one pic of the two of you guys
9 together.

10:01:11 10 He's saying, "You two guys are similar
11 facial features. I just want to see you side by side."
12 And he just continues page after page of basically saying
13 "I don't think Katie's a real person."

14 Page 108, Government's Exhibit 20, "Can I
10:01:33 15 get a pic of the two of you together?" Page 109, "Can I
16 get a pic of you guys?"

17 Page 110, when he's supposedly talking to
18 Katie, this is on the way up there supposedly, "Can I get
19 a pic of you and mom? Can I get a pix?"

10:02:13 20 Now, when you're talking to him, and again
21 I'm not going to go through all these pages, at some
22 point in these chats he talked to you about the fact he
23 recently lost his mom to Alzheimer's, correct?

24 A. I'm sorry, I couldn't hear you.

10:02:26 25 Q. Pardon me?

1 A. I couldn't hear what you said.

2 Q. I'm sorry. At some point he talks to you about the
3 fact he recently lost his mom to Alzheimer's in 2013,
4 correct?

10:02:38 5 A. He did state that.

6 Q. And she's been sick for a while, and he was very
7 close to his dad, correct?

8 A. He did say that.

9 Q. He was married and his marriage is on the rocks.
10:02:48 10 He was having employment issues, correct?

11 A. He did not mention a marriage.

12 Q. Did not mention a marriage? He did not indicate he
13 had two kids?

14 A. No, he did not, sir.

10:02:57 15 Q. Okay. He talked about being suicidal at some
16 point, you know, having some real suicidal issues,
17 correct?

18 A. He did.

19 Q. There was discussion about Motherless, Inc. or the
10:03:16 20 Motherless.com website?

21 A. That's correct, sir.

22 Q. And during the course of that discussion, first
23 off, what was Motherless?

24 You brought up the Motherless.com. What
10:03:33 25 was that?

1 A. What is Motherless.com?

2 Q. Yes. Right. I mean, you brought that up.

3 A. Motherless.com is a social media site where users
4 can make profiles very similar to Facebook, have friends,
10:03:52 5 join groups, upload videos, pictures, and it is
6 pornographic in nature.

7 Q. Okay. And he, during the course of that
8 discussion, he was asking you about did it have kids
9 involved, and you indicated to the effect either you
10:04:11 10 thought there were kids, because he asked you were the
11 kids doing stuff to each other or stuff.

12 I mean, had you seen that or not?

13 A. No, I've never seen any child pornography on
14 Motherless.

10:04:22 15 Q. Okay. You provided him the link to Motherless.com,
16 correct?

17 A. I don't know, sir. I don't believe I provided a
18 link to Motherless.com.

19 Q. All right. Now, who -- there was discussion about
10:04:44 20 him getting panties for Katie.

21 That was your suggestion as far as him
22 getting panties for Katie, correct?

23 A. Correct, sir.

24 Q. All right. When the car was searched, there were
10:04:55 25 no panties in the vehicle, correct?

1 A. No, there was not, sir.

2 MR. GREG McCORMACK: One second, Your
3 Honor, please.

4 One second, Your Honor, please.

10:05:56 5 THE COURT: Sure.

6 (Pause) .

7 MR. GREG McCORMACK: Your Honor, may I have
8 a side-bar?

9 THE COURT: Yes.

10:07:17 10 (Proceedings at side-bar:)

11 MR. GREG McCORMACK: Could we have a break
12 at this point? I just want to make sure I get everything
13 before I finish up.

14 THE COURT: Okay. How much longer do you
10:07:33 15 have, Greg?

16 MR. GREG McCORMACK: I'm just about done.
17 I just want to make sure I get everything.

18 THE COURT: How much?

19 MR. GREG McCORMACK: A 15-minute break.

10:07:40 20 THE COURT: You have about how long after
21 that?

22 MR. GREG McCORMACK: Literally I think I'm
23 done. I just want to make sure I don't miss anything.

24 THE COURT: We can wait. If you want to go
10:07:49 25 over that, we can wait.

1 MR. GREG McCORMACK: I'd rather take a
2 break so I'm not doing it in front of the jury.

3 THE COURT: Okay. That's fine. Let's take
4 a 15-minute break.

10:07:58 5 MR. FILIATRAUT: I'll check to see if the
6 next witness is here just to keep things rolling. He
7 should be here.

8 THE COURT: Sure. You can check.
9 Brian, you have some redirect?

10:08:07 10 MR. McDONOUGH: Yes.

11 THE COURT: About how long, roughly? 15,
12 20?

13 MR. McDONOUGH: Yes, 15, 20.

14 THE COURT: We'll see if there's any
10:08:14 15 questions after that, after redirect.

16 Okay. We'll take a break.

17 (End of side-bar conference).

18 THE COURT: Ladies and gentlemen, let's
19 take our 15-minute break at this point.

10:08:21 20 (Recess taken).

21 THE COURT: Please be seated, ladies and
22 gentlemen.

23 When you're ready, Mr. McCormack.

24 MR. GREG McCORMACK: Thank you, Your Honor.

10:30:45 25

1 BY MR. GREG McCORMACK:

2 Q. Now, Investigator Helmick, just a few more
3 questions, if I could, please?

4 What was the ultimate goal in this
10:30:54 5 investigation?

6 A. Well, the ultimate goal in any of my investigations
7 is to --

8 Q. Not any investigation. In this investigation.

9 A. In this investigation was to have a conversation
10:31:10 10 with an individual, in this case your client, and to see
11 if -- what they're interested in, what he was interested
12 in, and what his intentions were.

13 Q. All right. Now, you had an opportunity to discuss
14 an ultimate goal with Mr. Vickers at some point, didn't
10:31:32 15 you?

16 A. In what way, sir?

17 Q. Well, I mean, let's just look at it. I'm going to
18 Exhibit 20, Page 31.

19 You specifically, when he was discussing
10:31:48 20 with you the fact that you never answered any of his sex
21 questions, at some particular point you told him that you
22 did not want to cloud the ultimate goal here.

23 What were you talking about?

24 A. In previous conversations we had talked about him
10:32:08 25 having a relationship with my 13-year-old daughter Katie.

1 Q. Right.

2 A. And there was talk about impregnating her and
3 having a long-term arrangement or relationship.

4 Q. Right. And what, what this conversation to that
10:32:23 5 point was, he asked you what your favorite sexual
6 position was, correct?

7 A. Yes, he did.

8 Q. And then when apparently you didn't respond, he
9 said, "LOL, I notice you don't answer my sex questions."

10:32:39 10 And your response was "Well, what's the
11 point?"

12 Correct?

13 A. That's correct, sir.

14 Q. Now, you testified that you don't believe from all
10:32:48 15 these chat conversations that Mr. Vickers indicated he
16 wanted to have sexual relations with you.

17 That's your testimony, correct?

18 A. I stated that I did not think it was the sex act
19 itself. I thought it was me being involved in some
10:33:06 20 capacity.

21 Q. Right. Okay. So that's your testimony, we're on
22 record of that, and so also you've reviewed these text
23 messages numerous times.

24 But he says "Why not? I thought this might
10:33:24 25 be a mutual thing?" Correct?

1 A. Yes, he did.

2 Q. And you respond, "Eventually, but not right now."

3 Correct?

4 A. Correct.

10:33:33 5 Q. And then you respond again, "It's all about Katie
6 this first time."

7 And then he eventually says, "Sorry, I just
8 got so into you."

9 Correct?

10:33:44 10 A. Correct.

11 Q. And again, you immediately respond back, "Well, I
12 don't want to cloud the ultimate goal here at this
13 moment."

14 Correct?

10:33:52 15 A. Correct.

16 Q. So here you've got the target who is clearly
17 focusing on Katie -- not on Katie, on you, I'm sorry,
18 correct?

19 A. Correct.

10:34:02 20 Q. And you're saying, "Whoa, whoa, wait a minute. The
21 ultimate goal here is Katie," correct?

22 A. Correct.

23 Q. So you have this target focused on you and you're
24 trying to get him back on goal here is Katie, correct?

10:34:14 25 A. Correct.

1 Q. All right. And he indicates that he gets
2 sidetracked and he's saying that he's getting emotionally
3 tied to you, correct?

4 A. Correct.

10:34:25 5 Q. The conversation continues, this is Page 32, and
6 you say, "I can understand emotionally but not sexually
7 right now."

8 So the sexual aspect of it is discussed
9 between you and him, and you specifically refer to it as
10:34:47 10 not sexual right now, correct?

11 A. Correct.

12 Q. So you clearly are indicating, are you not, that if
13 he plays your game now, that sexually between him and you
14 is down the road, correct?

10:34:56 15 You're telling him that in black and white,
16 aren't you?

17 A. In any relationship that is a possibility.

18 Q. So -- what?

19 A. In any relationship in life, that is a possibility
10:35:07 20 in the future.

21 Q. Okay. So you do now agree that you're telling him
22 that if he does what you want with Katie, that a sexual
23 relationship him and you down the road is possible,
24 correct?

10:35:18 25 You admit that, correct?

1 A. It was not pivoted on the relationship.

2 Q. Ma'am, answer my question.

3 MR. McDONOUGH: Objection.

4 THE COURT: No, she has to answer the

10:35:31 5 question is it a possibility or not.

6 A. Is it a possibility or not?

7 THE COURT: Based on your conversation with
8 the defendant.

9 A. Of a future sexual relationship?

10:35:38 10 THE COURT: Yes.

11 MR. GREG McCORMACK: Yes.

12 A. That was talked about.

13 BY MR. GREG McCORMACK:

14 Q. No, it's not a question being talked about.

10:35:44 15 You were very clearly leading him to
16 believe with your conversations that you and he can
17 engage in sexual activity, sexual relationship down the
18 road if he does what you want him to do with Katie, yes
19 or no?

10:35:55 20 A. I don't agree with that entire statement.

21 Q. All right. Ma'am, do you or do you not agree that
22 you lead him to believe that if he does what you want him
23 to do with Katie, you will engage with him down the road
24 sexually; yes or no?

10:36:12 25 A. I don't agree with the entire statement.

1 Q. Okay. Well, what do you agree with?

2 A. I agree with I had conveyed that there was a
3 possibility of a future sexual --

4 Q. Relationship?

10:36:26 5 A. -- relationship.

6 Q. With the target of this offense, if he does what
7 you want him to do, correct?

8 A. Incorrect, sir.

9 Q. Pardon me? Incorrect?

10:36:35 10 A. I don't agree with the part where you say it's
11 pivoted on him doing something with my 13-year-old
12 daughter, and then having a sexual relationship.

13 Q. Okay. What's it pivoting on then, ma'am?

14 A. General relationships, after, in general, in life.

10:36:54 15 Q. In general?

16 A. Once you become emotionally connected with
17 somebody, have a relationship with them in some way,
18 sometimes that does lead into a sexual relationship at
19 some time.

10:37:05 20 Q. This relationship between you and Mr. Vickers was
21 specifically pivoting on him breeding Katie, yes or no?

22 A. I don't know if it would be pivoted on that.

23 Q. What else was it related to?

24 A. In general, it was a -- there was discussion of an
10:37:29 25 open family relationship, you know, referencing incest

1 relationship.

2 That's what our discussions were about in
3 general.

10:37:45

4 Q. The ultimate goal, as you indicated on the page
5 before, was what? Him breeding Katie, correct?

6 A. The ultimate goal, what I meant by those two words,
7 was the relationship with Katie.

8 Q. What kind of a relationship with Katie?

9 A. It would be a sexual relationship with Katie.

10:38:05

10 Q. Right. So the ultimate goal in your communications
11 with Mr. Vickers was him having a sexual relationship
12 breeding with Katie, is what you wanted him to do,
13 correct?

14 A. Correct, sir.

10:38:17

15 Q. And if he did that, you clearly indicated to him
16 that in the future, there might be a sexual relationship
17 with you, correct?

18 Yes or no?

19 A. I don't agree with that entire statement, sir.

10:38:29

20 Q. What don't you agree with in that entire statement?

21 A. I don't agree that if he had sex with my
22 13-year-old daughter Katie, that I would in turn
23 automatically have a sexual relationship with him in the
24 future.

10:38:44

25 Q. You certainly lead him to believe with this that

1 that could happen, correct?

2 A. A sexual relationship in the future may or could
3 happen.

4 Q. If he bred your daughter, correct?

10:38:56 5 A. Incorrect, sir.

6 Q. Incorrect. You're just simply not willing to admit
7 that, are you?

8 MR. McDONOUGH: Objection.

9 THE COURT: Sustained.

10:39:03 10 MR. GREG McCORMACK: Yes, Your Honor.

11 BY MR. GREG McCORMACK:

12 Q. Showing now what's market as Government's Exhibit
13 20, Page 7.

14 He specifically talked to you about the
10:39:40 15 fact that he didn't specifically ever have sex with a
16 grandmother before, correct?

17 A. Correct.

18 Q. He indicated to you, "I would have to do you just
19 for that reason," correct?

10:39:49 20 A. Correct.

21 Q. And you responded, "Ha-ha," and then he asked "You
22 up for that," correct?

23 A. Correct.

24 Q. And you responded "We shall see, LOL."

10:39:59 25 Correct?

1 A. Correct.

2 Q. Finally, I show you Government Exhibit 20, Page 85.

3 At one point you respond, "I get this was
4 all fantasy for you and you got your rocks off. You
10:40:20 5 never intended to come. Could have saved a lot of time
6 if you were honest from day one. But you're not an
7 honest guy, so I don't know why I expected more from
8 you."

9 Correct?

10:40:29 10 A. Correct.

11 Q. You then again -- you respond or you indicate,
12 "You're just a scared little boy. You can go fuck
13 yourself because Lord knows nobody else will," correct?

14 A. Correct.

10:40:45 15 MR. GREG McCORMACK: All right. Thank you,
16 ma'am.

17 I have no further questions.

18 Thank you, Your Honor.

19 THE COURT: Thank you, Mr. McCormack.

10:40:53 20 Redirect, Mr. McDonough.

21 REDIRECT EXAMINATION OF MIRANDA HELMICK

22 BY MR. McDONOUGH:

23 Q. On cross-examination, you were asked about some of
24 the operations and investigations that you have been
10:42:09 25 involved in since you've been on the Ohio Internet Crimes

1 Against Children task force, correct?

2 A. That is correct.

3 Q. And you had a number of successful operations
4 before this case?

10:42:21 5 A. Yes, I have.

6 Q. You've had successful ones after this case?

7 A. Yes, I have.

8 Q. Have you ever had an unsuccessful operation?

9 A. Many times.

10:42:29 10 Q. And what occurs in an unsuccessful operation? What
11 happens?

12 A. A period of time of chatting, phone calls,
13 pictures, videos sent back and forth, and for whatever
14 reason that person on the other end of the investigation
10:42:49 15 decides that they don't want to follow through in
16 traveling or they cut off communication completely.

17 They might stop e-mailing, they might stop
18 calling, and may disappear for a time. Sometimes they
19 return back after a certain time, or sometimes they never
10:43:07 20 return back.

21 Q. Have you had cases where individuals do not
22 distribute child pornography to the 13-year-old profile?

23 A. Correct. I've had cases where they do not
24 distribute child pornography to my 13-year-old profile.

10:43:24 25 Q. Have you had cases where they do not attempt to

1 persuade or entice or ask about having sex with your
2 13-year-old profile?

3 A. That's correct.

4 Q. And have you had cases where individuals do not
10:43:37 5 travel across state lines with the intention of engaging
6 in illicit sexual conduct?

7 A. That's correct.

8 Q. Okay. And you indicated that you are not the only
9 investigator for the Ohio Internet Crimes Against
10:43:51 10 Children task force?

11 A. That is correct.

12 Q. There are other investigators?

13 A. Yes, there are.

14 Q. And you also have a supervisor?

10:43:57 15 A. That's correct.

16 Q. And who is your supervisor?

17 A. David Frattare.

18 Q. And can you -- on cross-examination, you were asked
19 about various protocols.

10:44:07 20 What are the protocols that govern your
21 conduct and your undercover standards and operations?

22 A. Through ICAC or Internet Crimes Against Children,
23 we are governed by many rules and policies in regards to
24 how we may chat, what pictures we can send, and where
10:44:34 25 these investigations can take place.

1 Q. Okay. You were asked on cross-examination about a
2 photograph that you sent of yourself regarding that was
3 the bra picture?

4 A. Correct.

10:44:49 5 Q. Was that picture within the -- within the protocol?

6 A. Yes, it was.

7 Q. As an investigator, do you have a latitude
8 regarding the chatting that you have with the target?

9 A. Yes, we do.

10:45:02 10 Q. And you indicated that the chats that you have in
11 the case and in this case you had several, correct?

12 A. Yes, I did.

13 Q. And on cross-examination, I believe you were asked
14 you have different -- certainly different types of
10:45:17 15 communication involving the Google Voice text messages?

16 A. Yes.

17 Q. And in addition, you would also have the KIK
18 communications between the 13-year-old account?

19 A. Yes.

10:45:31 20 Q. As well as your account?

21 A. Yes.

22 Q. And then obviously the recorded calls as well,
23 correct?

24 A. Correct.

10:45:37 25 Q. And as part of the process, does your -- does the

1 Internet Crimes Against Children task force review at
2 some point the evidence in the case before the
3 investigation gets turned over for prosecution?

4 A. Yes.

10:45:55 5 Q. And is that done on any kind of traveler case of
6 someone traveling across state lines?

7 A. It is. Anytime before a person indicates an
8 interest in traveling, the chats are reviewed or
9 pictures, the various means of communication, they are
10:46:13 10 all reviewed.

11 If a person states that they may be
12 traveling, you know, the next day or anything like that,
13 the chats are re-reviewed. And then like you said,
14 before prosecution they are reviewed again.

10:46:30 15 Q. Sure. You were asked on cross-examination about
16 any training that you might have had involving having a
17 mother profile and a 13-year-old profile, and that type
18 of chatting with a target, correct?

19 A. Correct.

10:46:48 20 Q. Is every case unique or is every case the same when
21 it comes to the undercover role-playing that you do?

22 A. Most of these cases are very similar in the fact
23 that I do my undercover operations on the same websites,
24 so I am in the same groups, I am finding the same type of
10:47:16 25 person that is interested in these kind of things.

1 Q. You indicated on cross-examination that you
2 had -- one of the things that you did was actually look
3 at the profile and see what the -- what your interests
4 were, what the defendant's interests were, correct?

10:47:36 5 A. That's correct.

6 Q. And then you mentioned some of the chatting that
7 went on from there, correct?

8 A. Correct.

9 Q. Okay.

10:47:45 10 MR. McDONOUGH: Just a moment, Your Honor.

11 THE COURT: Sure.

12 BY MR. McDONOUGH:

13 Q. All right. Showing you what was mentioned on
14 cross-examination as Government's Exhibit 20, Page 40,
10:48:59 15 you recognize this exhibit from cross-examination?

16 A. Yes, I do.

17 Q. And part of it in going through on
18 cross-examination was a line that you had here, "I think
19 I've clouded your wants and desires. I pushed Katie on
10:49:15 20 you and I'm sorry for that. I think you're into me and
21 just said whatever I wanted to hear."

22 Correct?

23 A. Correct.

24 Q. You even give, "I suggested the breeding, not you,"
10:49:27 25 correct?

1 A. Correct.

2 Q. Now, before that, the one line that was not
3 highlighted is what was the response from the defendant
4 in that chat to you?

10:49:36 5 A. He said, "No, I really, really am I to younger."

6 Q. And what did you interpret that to mean?

7 A. I interpreted it to be "No, I really, really am
8 into younger."

9 MR. GREG McCORMACK: I'm going to object as
10:49:52 10 to her interpretation.

11 She can testify what it reads; not her
12 interpretation of what he meant by that.

13 THE COURT: It's her interpretation, but
14 she can't put that on the defendant.

10:50:02 15 In other words, how did you view that,
16 Investigator?

17 THE WITNESS: I viewed it the part where it
18 says "I to" to mean "Into."

19 BY MR. McDONOUGH:

10:50:13 20 Q. Okay. Was this one of the outs that you mentioned
21 giving the defendant?

22 A. Yes, it was.

23 Q. And what was the effect of the defendant's response
24 to you of, "No, I really, really am into younger"?

10:50:28 25 A. I'm sorry, could you repeat that?

1 Q. Yeah. You received a response from the defendant
2 regarding that?

3 A. Yes, I did.

4 Q. And what did you take that to mean?

10:50:41 5 A. I took it to mean that he was into younger girls
6 because previously in the line above I said, "But I don't
7 think you're into young girls," and his response, "No, I
8 really, really am into younger," meaning in my opinion
9 that he was into younger girls.

10:51:03 10 Q. Okay. Let me ask you this, in all the
11 communications, whether it be through Google Voice text
12 messages, through the KIK communications to 13-year-old
13 Katie, so the KIK communications to you, and the recorded
14 calls, was there ever a communication from the defendant
10:51:25 15 that he wanted to have sex with you but not have sex with
16 Katie?

17 A. No, never.

18 Q. In every communication that he had, was there
19 always a reference to having sex with Katie and then
10:51:40 20 potentially your involvement somewhere down the road?

21 A. That is correct.

22 Q. Turning your attention to Government's Exhibit 20,
23 Page 85, on cross-examination, you were asked about outs
24 that you gave the defendant.

10:52:12 25 Looking at Page 85, looking at the bottom

1 of the page, do you see your -- the response starting,
2 "If you come, you come"?

3 A. Yes, I do.

4 Q. Was this an out that you gave the defendant?

10:52:39 5 A. Yes, it was.

6 Q. Turning to Government's Exhibit 20, Page 89,
7 turning your attention to that phrase, "Like I said, if
8 you're actually here, let me know, quit this online
9 chat," is that another out that you gave?

10:53:23 10 A. Yes, it is.

11 Q. Government Exhibit 20, Page 102, and the top half
12 of the page referring to the bottom line, "Listen,
13 killing yourself is never the answer. I don't need
14 money. If you ever show up in Cleveland, text me and we
10:53:49 15 will come get you. Otherwise good LU."

16 What did you mean by that?

17 A. It continues on the next line.

18 Q. Oh. "Good luck with your life."

19 A. Yes.

10:54:05 20 Q. Was that an out that you gave him?

21 A. Yes, it was.

22 Q. Turn to Exhibit 20, Page 108, the top half of the
23 page, third line from the top.

24 Could you read that line?

10:54:25 25 A. I said, "You know you're welcome for as long as you

1 want, but if you don't want to come, that's fine."

2 Q. Okay. And that was another out that you gave him,
3 correct?

4 A. Correct.

10:54:35 5 Q. On cross-examination, you were also asked about
6 some of the language, language that was used, correct?

7 A. That is correct.

8 Q. And part of your duties as an investigator in terms
9 of engaging in this chat, are there protocols or
10:54:58 10 standards for the language that you use?

11 A. There's no protocol or standards as far as, like,
12 the language.

13 We are trained and told to make it as
14 realistic as possible, and also to communicate
10:55:16 15 effectively with another person in the same way that they
16 communicate.

17 In this case, there were several profane,
18 you know, words used by both Mr. Vickers and myself.

19 Q. Okay. On cross-examination you were asked about an
10:55:35 20 ultimate goal, and turning to Exhibit 20, Page 45, and
21 it's the bottom half of the page. Drawing your attention
22 to the third line.

23 What was the third line?

24 A. He said, "Honestly, I don't want you. I want her."

10:56:02 25 Q. And that "her" referring to?

1 A. Katie.

2 Q. And Exhibit 20, Page 51. The top half of the page,
3 and the second line that the defendant communicated to
4 you.

10:56:24 5 A. He said, "Just text me and let me know if you still
6 want, it's all about her. I will wait to hear back from
7 you though."

8 Q. And the following line?

9 A. "Monday equals breeding day."

10:56:39 10 Q. Okay. And Government's Exhibit 20, Page 52. The
11 top half of the page, and what is the fourth line that
12 the defendant communicated to you?

13 A. He said, "I still want her 13 YO body," meaning
14 13-year-old body.

10:56:59 15 Q. And continue.

16 A. "You know you want the baby from it. I
17 generally -- genuinely just want her sexually, not you.
18 You're kind of old for me (no offense)."

19 Q. Okay. On cross-examination you were asked about
10:57:19 20 the defendant wanting to have a picture of Katie.

21 Do you remember those questions?

22 A. Yes, I do.

23 Q. Okay. And turning to Government Exhibit 18,
24 Page 26, okay, do you recognize what this is?

10:57:45 25 A. Yes, I do.

1 Q. What is it?

2 A. It would be the KIK conversations.

3 Q. And these KIK conversations are between the
4 defendant and you, the mother profile?

10:58:00 5 A. Correct.

6 Q. Okay. And I'm looking on this.

7 Can you see the -- can you read the
8 communications from the defendant?

9 A. He said, "I done a lot of bad things, I am not
10:58:14 10 telling anyone over text or phone. I dated the one girl
11 with adopted kids and stuff happened there was secret."

12 MR. GREG McCORMACK: Your Honor, I object.
13 This goes beyond the scope of cross-examination. My
14 cross specifically asked --

10:58:29 15 THE COURT: No speaking.

16 MR. GREG McCORMACK: Yes, sir.

17 THE COURT: No speaking.

18 I'll sustain on that.

19 MR. McDONOUGH: Yes. I'm sorry.

10:58:35 20 BY MR. McDONOUGH:

21 Q. At the bottom of -- underneath that message, at the
22 last message, is there reference to pics of Katie, the
23 third box?

24 Actually, you know what? Can we go to
10:58:49 25 Government's Exhibit 18, Page 27. I'll flip the page.

1 Okay. Thank you.

2 Can you read the first communication on
3 that?

4 A. He said, "It's like you not giving me pics of
10:59:00 5 Katie. You wouldn't do it period cause you need that
6 barrier."

7 Q. Okay. What was your response?

8 A. I responded "True. I just don't want her pic out
9 there."

10:59:12 10 Q. Okay. Are there, as part of the protocols and
11 standards for chatting, what are the protocols regarding
12 sending pictures of children?

13 A. First of all, they have to be of a law enforcement
14 officer, whether they are pictures from the past or
10:59:36 15 regressed pictures of an adult law enforcement officer
16 that is regressed to make them look like a child.

17 Q. Okay.

18 A. No child pornography can be sent.

19 Q. Okay. You indicate on cross-examination that the
10:59:51 20 pictures that you use are actually your own personal
21 pictures of yourself, correct?

22 A. That is correct.

23 Q. Okay. Turning to Government's Exhibit 17,
24 Page 148. And focusing on the right side of the page, do
11:00:30 25 you recognize this -- what this is?

1 A. Yes. This would be the KIK communications between
2 Mr. Vickers and my 13-year-old profile for Katie.

3 Q. And again on cross-examination, you were asked
4 about the defendant wanting to receive a picture of
5 Katie.

11:00:48

6 What did the defendant communicate to
7 13-year-old Katie, if you could read the third box on the
8 right side of the page?

9 A. He said, "Send me a pic of your underwear to
10 motivate me."

11:01:01

11 Q. And then?

12 A. "You don't have to be wearing them, though," with
13 a smiley face.

14 Q. What was 13-year-old Katie's response?

11:01:13

15 A. "K."

16 Q. And what was the defendant's response?

17 A. A winky face, and "I would love to see."

18 Q. Okay. All right.

19 MR. McDONOUGH: All right. May I have just
20 a moment, Your Honor?

11:01:30

21 THE COURT: Sure.

22 MR. McDONOUGH: No further questions.

23 THE COURT: Thank you, Mr. McDonough.

24 MR. GREG McCORMACK: One second, please,
25 Your Honor.

11:01:48

1 THE COURT: Okay, Mr. McCormack.

2 (Pause) .

3 MR. GREG McCORMACK: Thank you, Your Honor.

4 RECROSS-EXAMINATION OF MIRANDA HELMICK

11:04:24 5 BY MR. GREG McCORMACK:

6 Q. There was a period of several days in December when
7 there was no communications that you were not responding
8 to him, correct?

9 A. I can't remember the exact dates, sir.

11:04:45 10 Q. Okay. Let me see if I can just refresh your
11 recollection.

12 Showing you Government Exhibit 20, Page 49.

13 I see communications, this is Page 50, on 12/18 we have
14 communications from him here and I see no response from
11:05:27 15 you on 12/18 at all, correct?

16 A. Correct.

17 Q. And I have 12/19, I have no response from you at
18 all, correct?

19 A. Correct. On Google Voice texting.

11:05:43 20 Q. Pardon?

21 A. This is the Google Voice texting. There is no
22 response on this communication, correct.

23 Q. On this communication, correct?

24 All right. And 12 -- again 12/19, I have
11:06:00 25 communications again from him. No response, correct,

1 from you?

2 A. Correct.

3 Q. All right. And Page 51, it's continuing 12/19, I
4 have no response. It says, "I haven't heard from you in
11:06:25 5 the past day. Worried about you guys."

6 He's talking about wanting to come up, hang
7 out with Katie?

8 And again at this particular point we can
9 argue about why he's saying what he's saying, but he's
11:06:42 10 indicating at this particular point, "Let me know if you
11 still want. It's all about her" at this particular
12 point, correct?

13 A. Correct.

14 Q. No response, correct?

11:06:54 15 A. Correct.

16 Q. On 12/20.

17 12/21, again no response, correct?

18 A. Correct.

19 Q. 12/21 here, again no response, "Tell Katie I was
11:07:19 20 thinking about her," correct?

21 A. Correct.

22 Q. Again 12/21, at this particular point when he
23 contacts you again at this particular point, and this is
24 where he says he just passed Pittsburgh and he says he's
11:07:44 25 keeping his word, he's coming up, says he's going to be

1 up there in about two hours, how does he find you.

2 Now, he never actually shows up on 12/21,
3 correct, or 12/22, I'm sorry?

4 A. Correct.

11:07:59 5 Q. And this is Government's Exhibit 20, Page 52. And
6 again he's making reference as the prosecution just made
7 reference "You're kinda old for me, no offense," correct?

8 A. Correct.

9 Q. Now, there's no wink wink after that. What is that
11:08:13 10 after that, is that a smiley face or --

11 A. That's a smiley face.

12 Q. All right. Now, as we know every time he's made
13 reference when he's talking about you directly, you
14 immediately kind of turn him off and say, "It's going to
11:08:24 15 be about Katie, not me," correct?

16 In the past we've seen communications about
17 that, correct?

18 A. Can you repeat that question?

19 Q. Sure. In the past when he's talking about you and
11:08:33 20 not Katie, you shut him down and you indicate, "No, it's
21 got to be about Katie," correct?

22 A. Correct.

23 Q. Okay. So now he's indicating it's about Katie, not
24 you, correct?

11:08:42 25 A. Correct.

1 Q. All right. And then on 12/22, because he indicates
2 it's about Katie at this particular point, you do
3 respond, correct, right here?

4 A. I don't see where you're referencing.

11:09:05 5 Q. Where you make reference right here, "Me: What?"
6 He asked, "How will I find you?"

7 And you respond, "Me: What"?

8 A. I don't see that on my screen, sorry.

9 Q. That's because I was too low. I'm sorry, I
11:09:20 10 apologize.

11 Right? Right here.

12 A. Yes.

13 Q. You respond, because at this particular point he's
14 saying it's all about Katie, he's not talking about you,
11:09:35 15 correct, so now you've got him where he's saying it's all
16 about Katie and now you start responding again, correct?

17 A. I did respond back.

18 MR. GREG McCORMACK: Right. Thank you.

19 No further questions.

11:09:46 20 THE COURT: All right, Mr. McCormack, thank
21 you.

22 All right. Ladies and gentlemen, before
23 she steps down, any questions? Can you write it down?

24 (The following is a question from a juror:
11:10:26 25 "What is on Mr. Vickers' profile (EP) that indicates he

1 wanted breed with young girls?")

2 THE COURT: Counsel.

3 (Proceedings at side-bar:)

4 THE COURT: Take a look. It's a loaded
11:11:14 5 question.

6 Do you want to rearrange that to say that
7 what sparked your interest based on his profile?

8 MR. McDONOUGH: Yes, because the
9 investigator would testify that, you know, as part of
11:11:45 10 after he -- after he contacted her, she looked at the
11 profile and based on that continued the undercover op
12 with him.

13 So I would be happy to rephrase or to
14 rearrange that.

11:12:00 15 MR. JARRETT McCORMACK: Judge, I think any
16 question about that -- I think any question about that at
17 all is going to invite response that goes directly into
18 what we dealt with on the motion in limine because her
19 testimony was going to be his interests and groups he
11:12:15 20 belonged to and everything else.

21 Before you address that, I think that goes
22 down a slippery slope.

23 THE COURT: I agree with you.

24 The objection will be sustained. We won't
11:12:25 25 ask that.

1 I do have one question I am going to ask so
2 I'll let you guys follow-up.

3 (End of side-bar conference).

4 THE COURT: We received one question, it's
11:12:34 5 a good question but, unfortunately, we can't ask it based
6 on the Court's prior rulings in this case.

7 I do have one question, Ms. Helmick.

8 So that the jury is clear, who has the
9 authority to shut down an investigation?

11:12:51 10 THE WITNESS: I do.

11 THE COURT: Okay. On your own, or in
12 conjunction with a supervisor?

13 THE WITNESS: I would run -- I would talk
14 to my supervisor before shutting an operation down.

11:13:06 15 THE COURT: Okay. Mr. McDonough, any
16 follow-up question to that?

17 REDIRECT EXAMINATION OF MIRANDA HELMICK

18 BY MR. McDONOUGH:

19 Q. If you wanted to proceed on an investigation and
11:13:26 20 your supervisor wanted to terminate it, it would be your
21 supervisor's call?

22 A. It would be.

23 MR. McDONOUGH: Okay. Thank you, Your
24 Honor.

11:13:32 25 THE COURT: Okay. Mr. McCormack, anything?

1 MR. GREG McCORMACK: Yes.

2 RECROSS-EXAMINATION OF MIRANDA HELMICK

3 BY MR. GREG McCORMACK:

4 Q. Did you ever go to your supervisor to request to
11:13:39 5 shut down an investigation?

6 A. No, I did not.

7 Q. How many times does an individual during the course
8 of the investigation have to say no and indicate they're
9 not interested before you would go to your supervisor to
11:13:52 10 request to shut down the investigation?

11 MR. McDONOUGH: Objection.

12 THE COURT: Sustained.

13 Investigator Helmick, thank you very much.

14 You can step down.

11:14:01 15 (Witness excused).

16 THE COURT: I will see counsel at side-bar,
17 please.

18 (Proceedings at side-bar:)

19 THE COURT: Okay. Witness here, Kevin?

11:14:18 20 MR. FILIATRAUT: Yeah, he's here. I would
21 like just a minute, I'm going to move the evidence
22 computer to the back so I can control it from the podium.

23 THE COURT: Okay.

24 MR. FILIATRAUT: But he should be out there
11:14:29 25 ready to go.

1 THE COURT: Okay. How long you figure?

2 MR. FILIATRAUT: I figure no longer than an
3 hour.

11:14:38

4 THE COURT: Okay. That would be lunch time
5 break then.

6 Okay. Let's get the direct in --

7 MR. FILIATRAUT: Okay.

8 THE COURT: -- before lunch, and then we'll
9 have the opportunity, obviously we'll do that.

11:14:47

10 MR. GREG McCORMACK: Yes, sir.

11 THE COURT: Just a heads-up, don't worry
12 about seeking to introduce the exhibits after you rest.
13 I do that at the end of the case for everybody.

14 MR. McDONOUGH: Yes, sir.

11:14:55

15 MR. GREG McCORMACK: I was wondering how
16 you do that.

17 MR. McDONOUGH: We have actually gone
18 through the exhibits and we have an agreement as to what
19 would go.

11:15:01

20 THE COURT: Okay. That would be fine.

21 MR. McDONOUGH: I would say the government
22 rests pending the admission of the Government's Exhibits,
23 and that's all.

24 THE COURT: That's fine. We'll do the
11:15:10 25 admission of exhibits at the end of the case after

1 everything is done.

2 Still plan on not testifying?

3 MR. GREG McCORMACK: Correct.

4 THE COURT: Just so we know.

11:15:17 5 MR. GREG McCORMACK: On track.

6 THE COURT: And we are on track. Okay. I
7 don't want to take a break. Let's just go ahead and set
8 up and let's get going.

9 MR. FILIATRAUT: Yes, sir.

11:15:25 10 (End of side-bar conference).

11 MR. FILIATRAUT: Government would call
12 David Frattare.

13 THE COURT: Hold on. Do you have something
14 in your mouth, sir?

11:16:23 15 THE WITNESS: No, I don't.

16 THE COURT: You can stay right there.

17 (Pause).

18 DAVID FRATTARE,
19 of lawful age, a witness called by the Government,
20 being first duly sworn, was examined

21 and testified as follows:

22 THE COURT: Please have a seat.

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Mr. Filiatraut, when you're
11:17:21 25 ready.

1 MR. FILIATRAUT: Thank you, Your Honor.

2 DIRECT EXAMINATION OF DAVID FRATTARE

3 BY MR. FILIATRAUT:

11:17:25

4 Q. Sir, would you please state your name and spell it
5 for the record?

6 A. It's David Frattare, it's F-R-A-T-T-A-R-E.

7 Q. All right. Would you please tell the jury where
8 you work and what you do?

11:17:35

9 A. Employed by the Cuyahoga County Prosecutor's
10 Office. I serve as the director of state investigations
11 and the ICAC commander for the Ohio Internet Crimes
12 Against Children task force.

13 Q. All right. And how long have you had that
14 particular position?

11:17:48

15 A. I have been the ICAC commander for about a year
16 now. I've been employed by the Prosecutor's Office since
17 October of 2009.

18 Q. Okay. And are you a law enforcement officer?

19 A. Yes, I am.

11:18:01

20 Q. Okay. Please explain what type of officer you are,
21 the training you've had, for the jury.

22 A. I've been in law enforcement for 17 years, from
23 1997 to 2009.

11:18:17

24 I was employed as a special agent with the
25 Pennsylvania Office of Attorney General in their Bureau

1 of Criminal Investigations.

2 From 2009 to the present I've been employed
3 as an investigator and a certified peace officer here in
4 the State of Ohio with the Cuyahoga County Prosecutor's
11:18:31 5 Office.

6 Q. All right. And can you explain to the jury what
7 does the commander of ICAC do?

8 A. There are 61 federally funded ICAC task forces
9 throughout the country. Each one of those task forces
11:18:46 10 has an ICAC commander who's responsible for the
11 day-to-day administration of the task force, the
12 administration of the federal grant that funds that task
13 force, as well as the investigation sort of collaboration
14 of child exploitation investigations throughout the State
11:19:07 15 of Ohio.

16 Q. As commander, are you the supervisor of any
17 individuals with the ICAC task force?

18 A. I am. I supervise eight individuals directly out
19 of our Parma office; four investigators, three forensic
11:19:25 20 examiners and a civilian analyst.

21 Q. Okay. And let's talk about those positions within
22 ICAC for a moment.

23 What is the job of an investigator with
24 ICAC? Please tell the jury.

11:19:39 25 A. Investigators would be responsible for conducting

1 proactive and reactive investigations. Those may pertain
2 to undercover investigations online dealing with social
3 networking sites. May also deal with peer-to-peer
4 investigations which are investigations involving child
11:19:59 5 pornography that is shared via what we would call file
6 sharing networks or peer-to-peer networks.

7 Investigators would also be responsible for
8 reacting to complaints that we may receive from the
9 National Center for Missing and Exploited Children, the
11:20:14 10 general public, as well as initiating their own
11 investigations, any one of those types of investigations.

12 Q. All right. As part of your description of
13 proactive investigations, you mentioned peer-to-peer.

14 Are there any other types of proactive
11:20:31 15 investigations that go on?

16 A. We would also conduct, as I said, undercover online
17 investigations where an investigator may pose either as a
18 minor child online or an adult, a parent with a minor
19 child, to engage in online conversations with individuals
11:20:51 20 dealing with child sexual exploitation.

21 Q. What is the purpose of those types of
22 investigations?

23 A. Essentially to locate offenders, those individuals
24 who may have a proclivity toward children or an interest
11:21:04 25 in children, to attempt to identify those individuals and

1 either get them to travel to a location here within
2 Cuyahoga County, or to obtain evidence that they are, in
3 fact, involved in the exploitation of children.

4 Q. Now, are your investigators and you and your unit
11:21:26 5 trained in this type of undercover operation?

6 A. We are, yes.

7 Q. Okay. Could you explain what that type of training
8 that is, for the jury?

9 A. The ICAC task force is governed by, as I said, a
11:21:40 10 federal grant from the Department of Justice.

11 Additionally, the Department of Justice has
12 contracted with Fox Valley Technical College out of
13 Wisconsin to provide a number of training opportunities
14 for ICAC investigators, namely among those trainings that
11:21:57 15 involve how to respond, how to engage in, how to initiate
16 investigations dealing with online offenders.

17 That training through Fox Valley, in
18 addition to training that we would receive from the Ohio
19 Peace Officer Training Academy as well as some training
11:22:15 20 that we put on ourselves as an ICAC task force, allows
21 our investigators and the investigators that work ICAC
22 cases throughout Ohio to sort of better understand the
23 nature of these investigations and how they're to be
24 conducted.

11:22:29 25 Q. All right. Now, when an investigation like this is

1 occurring, do you as a supervisor check in to see what's
2 happening with any particular investigation?

3 A. I do.

4 Q. Okay. Please explain to the jury what it is to
11:22:48 5 conduct one of these undercover investigations.

6 A. Typically one of our investigators would create a
7 profile, they would set up an essentially a fictitious
8 account online, whether that be a minor child or an
9 adult, as I said with minor children.

11:23:07 10 And they would essentially input or insert
11 that profile into the landscape of the Internet. That
12 may be on a social networking site like Facebook. It may
13 be on a website that is more geared toward adult fetishes
14 like Motherless or the Experience Project, or it may be
11:23:24 15 something as simple as going onto Craig's List or a site
16 like Back Page and basically setting up that profile and
17 waiting for an offender or a subject to make contact with
18 that profile.

19 Q. All right. So your investigators, when they create
11:23:42 20 these profiles, are they portraying themselves as they
21 are, genuine people, or are they playing a role?

22 A. They're playing a role.

23 Q. Okay. Now, do these investigations happen on
24 mainstream-type social networking and then other types
11:24:02 25 that might not be mainstream?

1 A. They may. They may, as I said, something as simple
2 as Facebook or Instagram. We tend to focus on those
3 sites popular with young children, teenagers, young
4 adults.

11:24:18 5 We also do a number of investigations that
6 focus on nontraditional websites, sites that may be
7 geared more toward, as I said, adult fetishes, sexually
8 explicit content, things of that nature.

9 Q. And prior to the investigation which resulted in
11:24:39 10 the arrest of David Vickers, had you heard of a website
11 called the Experience Project?

12 A. I had, yes.

13 Q. All right. And is this the type of website where
14 undercover investigations have occurred?

11:24:52 15 A. Yes.

16 Q. Now, your investigators, is one of them an
17 individual named Miranda Helmick?

18 A. She is, yes.

19 Q. Okay. How long has she been an investigator with
11:25:07 20 your unit?

21 A. She has been employed with us about a little more
22 than a year.

23 Q. Okay. And are you familiar with the investigation
24 that occurred on -- beginning with the Experience Project
11:25:22 25 and resulting in the arrest of an individual named David

1 Vickers?

2 A. Yes, I am.

3 Q. Who conducted that investigation from ICAC?

4 A. Investigator Helmick.

11:25:30 5 Q. Okay. Did you have supervision of that
6 investigation?

7 A. I did.

8 Q. Were you aware of the types of -- the operation
9 that Investigator Helmick was conducting?

11:25:48 10 A. Yes, I was.

11 Q. Okay. Let's step back for a moment.

12 Generally speaking, you have said in
13 undercover investigations, sometimes your investigators
14 pose as children, sometimes they pose as parents.

11:26:02 15 Do they ever pose as both?

16 A. Yes.

17 Q. Okay. And is that -- was that the case with this
18 particular investigation?

19 A. Yes, it was.

11:26:12 20 Q. All right. Now, let's step back again.

21 Generally speaking, when an undercover
22 investigation is occurring and someone might travel, is
23 there protocol for that within your unit?

24 A. There is, yes.

11:26:29 25 Q. Explain that to the jury.

1 A. The investigator would work the case as he or she
2 sees fit. They would engage in the conversations. They
3 would make arrangements to have the suspect travel, as we
4 would say.

11:26:46 5 At that point I typically will ask the
6 investigator to provide me all of the case-related
7 materials, specifically the chats, the text messages, any
8 of the phone calls that occurred, to allow me to review
9 that material before we make a decision as far as setting
11:27:04 10 up an operation to effect that arrest.

11 Q. Okay. And when that occurs, as the supervisor
12 overseeing one of your investigators' work, what sorts
13 of things are you looking for?

14 A. I'm looking to make sure that the language that the
11:27:26 15 undercover investigator is using with the defendant or
16 the subject is appropriate for the type of conversation
17 or for the type of profile that's being used.

18 I'm looking for any sort of red flags that
19 I may see that may cause us concern down the road from a
11:27:42 20 prosecution standpoint.

21 Anything that maybe we've trained our
22 investigators not to say, I'm looking for those things.

23 Q. Okay. As part of the training, are members of your
24 unit trained on knowing the difference or identifying the
11:28:02 25 difference between someone who is just interested in

1 talking and then someone who is interested in talking and
2 doing?

3 A. Yes.

4 Q. And what's the difference there?

11:28:12 5 A. Well, it can be a difficult -- it can be difficult
6 to make that determination sometimes.

7 We've tasked the investigators with knowing
8 when, as you said, an investigator or, I'm sorry, if a
9 subject is simply role playing or fantasizing as opposed
11:28:30 10 to actually making arrangements or setting up a meeting
11 or an opportunity to travel.

12 So investigators will typically look for is
13 the subject on his own, maybe looking up where the child
14 or the adult lives. Is he making plans on his own to
11:28:51 15 figure out how to get here, things of that nature.

16 Q. Okay. And in terms of the idea of fantasy versus
17 action, all right, do you have investigations where
18 subjects might talk about child pornography, yet not
19 obtain it and distribute it?

11:29:10 20 A. Certainly.

21 Q. Okay. So is there a difference between talking
22 about child pornography and then actually sending some
23 child pornography to somebody?

24 A. There are a lot of times where individuals will say
11:29:22 25 that they have child sexual exploitation material, that

1 they're interested in traveling to engage in sexual
2 activity with a minor.

3 Some of those investigations may go on for
4 months or years, and that individual may never travel or
11:29:36 5 may never actually send that material.

6 Those investigations usually are sort of
7 set aside or set into an inactive state until the subject
8 either returns to the conversation or, as I said, maybe
9 if they've indicated that they have material, if they
11:29:54 10 send it at some point, we may sort of reinitiate with
11 that individual.

12 Q. Okay. Is there a time frame that's typical in
13 these investigations?

14 You just mentioned sometimes someone might
11:30:05 15 chat for years before they actually do something.

16 A. There's really not in my experience. I've arrested
17 individuals after several hours, but I've also engaged in
18 online conversations where they've gone on for two years
19 in some cases.

11:30:21 20 It just depends on the subject, how they
21 want to proceed, what they're saying in their
22 conversations.

23 Obviously, as an undercover investigator,
24 you may be dealing with five, ten, 20 different subjects
11:30:34 25 through one undercover profile so you may need to

1 prioritize an individual who's actively talking about
2 engaging in this activity as opposed to someone who may
3 appear to be fantasizing or role playing.

4 Q. Now, let's talk about the undercover activities.

11:30:52 5 You've already testified that your
6 investigators, when they do this activity, they're
7 playing a role.

8 Is that true?

9 A. Yes.

11:30:59 10 Q. Explain what that means, when you're talking about
11 websites that are not mainstream.

12 A. Well, we're obviously -- we're obviously interested
13 in or looking for offenders who have a proclivity or an
14 interest in children, so we are forced to look for these
11:31:18 15 individuals not simply on mainstream websites like
16 Facebook, but on sites that, as I said, would cater
17 toward adult fetishes or adult interest or illicit
18 activity.

19 We do a lot of work with a site known as
11:31:36 20 Motherless which is geared towards adults and adult
21 fetishes, and from time to time you will see extremely
22 explicit sexual material. You will see graphic sexual
23 conversation about the exploitation of children, about
24 the exploitation of adults.

11:31:51 25 And so we've been forced to sort of gear

1 our efforts away from traditional sites like Yahoo and
2 Facebook, and focus more on these, these adult-type
3 sites.

4 Q. When an undercover officer is on one of these sites
11:32:07 5 pretending to be somebody, do they have to be -- pretend
6 to be somebody who is believably interested in that
7 material?

8 A. Certainly. A number of these sites ally to join
9 groups, groups certainly unlike what you see on Facebook,
11:32:26 10 groups that have an interest toward children, the sexual
11 abuse of children.

12 So to provide some validity to the profile,
13 the investigator may utilize photographs, they may
14 utilize joining these groups, being associated with these
11:32:40 15 groups, maybe posting some comments on their page that
16 would sort of let others know that they share similar
17 interests as the users that we may be looking for.

18 Q. All right. And is it the goal to, for the first
19 contact of an undercover officer, to have someone make
11:33:01 20 contact with them?

21 A. With the undercover?

22 Q. Yes.

23 A. Yes.

24 Q. Okay. Are there rules about what types of photos
11:33:12 25 they could put on these sites or distribute to subjects

1 they're communicating with?

2 A. There are. We will never post photos that show
3 nudity, either of ourselves or of a child, but obviously
4 that's a -- that hampers our investigations in some
11:33:34 5 respects, especially with these adult websites.

6 Most of the photos you see of users'
7 profiles on these sites are rife or filled with pictures
8 of nudity, images of nudity, adults who have taken nude
9 photos of themselves, made them a part of their profile.

11:33:51 10 We will certainly draw the line at that,
11 but we will, if need be, post some scantily clad photos.
12 If the undercover investigator feels that that may help
13 their profile, that may be a photo that we need to use.

14 Q. Okay. Before an undercover utilizes a photograph,
11:34:12 15 do you review it?

16 A. I do. I review the photo.

17 The photos are also reviewed by two ICAC
18 prosecutors who are assigned to the ICAC task force
19 through the Cuyahoga County Prosecutor's Office. The
11:34:25 20 three of us sign off on that photo.

21 We then allow the investigator to utilize
22 it for their undercover purposes.

23 Q. All right. And are there rules, if they're posing
24 as a child, what types of photographs they can use for
11:34:39 25 that?

1 A. The photographs that we use for child profiles,
2 those fall under the guideline and standard that has been
3 established by the Department of Justice.

4 Those photos are -- we're required to use
11:34:57 5 photos of individuals associated or employed by criminal
6 justice agencies or law enforcement agencies.

7 So all of the photos that we have of
8 children would be a law enforcement officer or a criminal
9 justice employee, usually a picture of them as a minor
11:35:13 10 child, but that individual at the current time has to be
11 over the age of 18.

12 Q. And with that, is that an idea of consent in terms
13 of -- let me ask it this way.

14 Why is that? Why is that that you can only
11:35:33 15 use a picture of a law enforcement officer as a child in
16 these investigations?

17 A. Well, we obviously want to obtain their consent,
18 but we also want to make sure that the photos we're using
19 are not just random, random individuals or random
11:35:46 20 children from the Internet.

21 We want to make sure that the photos we're
22 using are provided to us by a law enforcement officer or
23 criminal justice employee who has consented to the use of
24 those photos.

11:36:08 25 Q. Thank you. Getting back to this particular

1 investigation, did you review all the photographs that
2 Investigator Helmick used in this case?

3 A. I did.

4 Q. And were you aware that during this -- during her
11:36:29 5 chats with the subject in this case, the subject was also
6 chatting with a 13-year-old persona that she was
7 operating?

8 A. I was aware of that.

9 Q. Okay. Were you aware that during this operation,
11:36:44 10 the subject of this investigation sent child pornography
11 to that 13-year-old persona?

12 A. Yes.

13 Q. And were you aware that during this investigation,
14 the subject of the investigation was interested in
11:37:04 15 traveling across state lines to Ohio?

16 A. Yes.

17 Q. All right. Now, was there a time in this
18 investigation where you reviewed it in terms of deciding
19 whether to proceed with further investigation prior to
11:37:21 20 the subject traveling?

21 A. Yes.

22 Q. Okay. Explain that to the jury.

23 A. I would have reviewed -- in the lead up to the
24 early days of January of this year, Investigator Helmick
11:37:33 25 would have provided me, as I said, with the chats, the

1 conversations, any of the text messages, e-mails,
2 telephone calls that had occurred between her and the
3 defendant.

4 I would have made a decision at that point
11:37:46 5 to go ahead with essentially allowing him to -- when I
6 say "allowing him to travel," I mean it was on our end
7 operationally a good time for us to be able to conduct an
8 operation and effect an arrest.

9 Q. Okay. What type of apparatus or things go into
11:38:10 10 effect when you are going to arrest someone who travels
11 across state lines?

12 A. In an ideal situation, we would have enough time to
13 utilize the resources of the local police, of other
14 agencies that are affiliated with the ICAC task force.

11:38:27 15 We like to have anywhere from eight to 12
16 officers on scene to effect the arrest safely, to conduct
17 surveillance of the location, to be able to detain the
18 individual, and then conduct both an interview of him if
19 he's willing, and then also handle any evidence or
11:38:48 20 inventory issues that need to be handled upon that
21 arrest.

22 Q. What type of locations -- let me step back.

23 Were you involved in the arrest in this
24 particular case?

11:39:02 25 A. Not the physical arrest.

1 I was there on scene. There were other
2 officers in a better vantage point that were able to move
3 in and effect the arrest.

4 Q. Okay. Were you there when the arrest was made?

11:39:15 5 A. I was.

6 Q. Okay. And did you conduct further investigation
7 after the arrest in terms of seizing physical evidence?

8 A. I did, yes.

9 Q. The individual who was arrested at the conclusion
11:39:29 10 of Miranda Helmick's investigation, is that person in the
11 courtroom today?

12 A. Yes, he is.

13 Q. Would you please point to him and describe what
14 he's wearing?

11:39:36 15 A. He's wearing a white shirt with a, looks like, a
16 red, blue and gray tie.

17 MR. FILIATRAUT: Your Honor, could the
18 record please reflect the witness has identified the
19 defendant?

11:39:44 20 THE COURT: He has.

21 MR. FILIATRAUT: Thank you.

22 BY MR. FILIATRAUT:

23 Q. Now, where was this arrest made?

24 A. It was made in the parking lot of Jordan's
11:39:57 25 Restaurant, which is located at the corner of Brookpark

1 and Chevy Boulevard.

2 Q. In what city?

3 A. That would be Brooklyn, I believe.

4 Q. Okay. And why Jordan's Restaurant?

11:40:13 5 A. We will utilize various public locations based on
6 the time of day, the conversation that's occurring.

7 We typically will leave it up to the
8 undercover investigator. Sometimes the suspect or the
9subject will mention a place they would like to meet, but
11:40:35 10we typically like to make it a public place that allows
11us some easy access or easy vantage points for the
12operation.

13 Q. Okay. And when this occurred and after the arrest
14was made, did you take photographs?

11:40:54 15 A. I did.

16 Q. Okay. In front of you in Binder 2 of 2, if you'd
17turn to Tab 21, all right, we have 46 photographs there.

18 If you could flip through them.

19 THE COURT: Mr. Filiatraut, do we have
11:42:10 20exhibit numbers just for purposes of the record for
21those?

22 MR. FILIATRAUT: Yes. This is Exhibit 21,
23Pages 1 through 46.

24 Thank you, Judge.

11:42:16 25 A. Okay.

1 BY MR. FILIATRAUT:

2 Q. All right. So you've been able to look through
3 Exhibit 21, Pages 1 through 46.

4 Just talking about them as a group, do you
11:42:27 5 recognize them?

6 A. I do.

7 Q. Okay. Generally speaking, what do they depict?

8 A. They depict the location where the arrest was
9 effected, specifically the Jordan's Restaurant, the
11:42:38 10 parking lot outside, and then the contents, exterior and
11 interior photos of the vehicle driven by the defendant to
12 the location.

13 Q. These photographs, did you take them?

14 A. I did.

11:42:47 15 Q. And are they true and accurate representations of
16 the way things looked at the time you took them?

17 A. They are, yes.

18 Q. All right. Okay. Now, on the screen I'm putting
19 up Exhibit 21, this is Page 1 of 46 here.

11:43:09 20 What does this show?

21 A. This would be the defendant's vehicle parked in
22 front of Jordan's Restaurant.

23 Q. All right. Looking at Page 3 here, what do we see
24 there?

11:43:30 25 A. Same vehicle, just a view of it from the front.

1 Q. Okay. And in taking these photographs, did
2 you -- aside from taking the photographs, did you search
3 the car?

4 A. We did, yes, sir.

11:43:55 5 Q. Okay. Did you find anything inside the car?

6 A. We did, yes. Several items, including the
7 defendant's phone as well as a bag that contained a
8 pre-packaged cell phone.

9 Q. All right. Were those items seized as evidence?

11:44:22 10 A. They were.

11 Q. Okay. When you -- when you do this sort of search,
12 do you record the items that you take and see on an
13 inventory sheet?

14 A. We do, yes.

11:44:39 15 Q. All right. Let me show you Government's Exhibit 30
16 on the screen there.

17 Do you recognize that?

18 A. Yes, I do.

19 Q. Okay. And going to Page 2, what do we see there?

11:45:01 20 A. That would be the second page of the vehicle
21 inventory and release form that we utilize, the second
22 page or the back page contains a listing of the items
23 that were inventoried from the vehicle incident to the
24 defendant's arrest.

11:45:15 25 THE COURT: Mr. Filiatraut, can you blow

1 that up a little bit, please, for the jury?

2 MR. FILIATRAUT: Yes.

3 BY MR. FILIATRAUT:

4 Q. And is it fair to say we see 25 items on this list?

11:45:30 5 A. That's correct.

6 Q. All right. Were these items taken as evidence?

7 A. They were, yes.

8 Q. All right. Government's Exhibits 27, 26, 28 and
9 29.

11:46:10 10 MR. FILIATRAUT: May I approach the
11 witness?

12 THE COURT: Yes.

13 BY MR. FILIATRAUT:

14 Q. I'm going to hand you these exhibits.

11:46:17 15 I'd like you to take a look at them and
16 tell us if you recognize them.

17 A. I do.

18 Q. All right. Generally speaking, are these items
19 that you took from the defendant's car as evidence?

11:46:30 20 A. Yes, they are.

21 Q. Let's begin with item, this would be Government's
22 Exhibit 26.

23 And what is that?

24 A. Item 26 is an Apple iPhone with a rubber case.

11:46:46 25 Q. Okay. If you could please hold that up for the

1 jury.

2 All right. This iPhone, was this analyzed
3 by, forensically, by your unit?

4 A. Yes, it was.

11:47:01 5 Q. All right. We'll return to that idea momentarily.

6 What was Government's Exhibit 27? That
7 might be on the paper bag in front of you.

8 A. 27 is a paper bag with red stripes which contains a
9 Boost Mobile LG Realm cellular telephone.

11:47:25 10 Q. All right. And inside the bag, is there something
11 else there?

12 A. There's a red tissue paper, wrapping paper of
13 sorts.

14 Q. All right. Thank you. All those items, the bag,
11:47:45 15 the phone and the tissue paper, were those seized from
16 the defendant's car?

17 A. Yes, they were.

18 Q. And just so we are clear with the record, the
19 phone, is that in pre-packaged retail packaging?

11:47:54 20 A. Yes, it is.

21 Q. And was it unopened at the time it was seized?

22 A. Yes, it was.

23 Q. All right. What is Government's Exhibit 28?

24 A. 28 is a black wallet which contains, among other
11:48:09 25 things, a Virginia driver's license for David Wayne

1 Vickers.

2 Q. All right. Was that seized from the car?

3 A. Yes, it was.

4 Q. What is Government's Exhibit 29, please?

11:48:39 5 A. Exhibit 29 is a receipt from the Pennsylvania
6 Turnpike, excuse me, Plaza 30 at the Warrendale
7 interchange dated January 5th, 2015 at 7:20 a.m. for a
8 total of \$16.20.

9 Q. Okay. And back to the screen which is Government's
11:49:06 10 Exhibit 30, the inventory sheet, is this a sheet that you
11 completed and kept in the ordinary course of business of
12 the Internet Crimes Against Children task force?

13 A. Yes, it is.

14 Q. All right. Were these items seized from the car
11:49:24 15 and then photographs taken as showing how they were in
16 the car at the time you found them?

17 A. Some of the photos were.

18 Some of the photos that are listed in here,
19 the items were arranged at a later date to show the
11:49:40 20 contents.

21 Q. All right. And we'll just go through a few of
22 these then.

23 Let me show you on the screen Government's
24 Exhibit 21, Page 12. What do we see there?

11:49:56 25 A. That's the rear, rear of the vehicle. There's a

1 blue cooler-type bag as well as some other, other items
2 on the seat.

3 Q. Looking at Government's Exhibit 21, Page 16, what
4 do we see there?

11:50:20 5 A. That's the front passenger seat of the vehicle,
6 miscellaneous paperwork, water bottles, looks like a CD
7 holder there, as well as a brown paper bag.

8 Q. Looking at the next page, Page 17, what do we see
9 there?

11:50:43 10 A. That is the front passenger seat foot area, feet
11 area as well, same blue clipboard with some paperwork
12 attached to it, and a water bottle.

13 Q. Page 18, what do we see there?

14 A. That is the front passenger seat, also. Just a
11:51:00 15 close-up of some of the items that are on the seat there
16 as well as the Apple iPhone face -- face down on the seat
17 there.

18 Q. Okay. The iPhone, is that underneath the wallet?

19 A. That looks to be a CD case possibly.

11:51:19 20 Q. Oh, okay. Thank you.

21 Next page, 19, what do we see there?

22 A. That was a close-up of the receipt that I
23 referenced as Government's Exhibit 29 from the
24 Pennsylvania Turnpike.

11:51:33 25 Q. Okay.

1 A. That appears to be on the front passenger seat as
2 well. You see the -- I believe that's the iPhone in the
3 upper left corner of the photo.

4 Q. Okay. Showing you Page 25, what do we see there?

11:51:50 5 A. That's simply a close-up of a Virginia driver's
6 license belonging to David Wayne Vickers.

7 Q. Okay. And where does it show that his residence
8 was at the time of his arrest?

9 A. 175 Spencer Terrace, Southeast, Leesburg, Virginia
11:52:11 10 20175-8997.

11 Q. Page 26, what do we see there?

12 A. These are additional cards that were found in the
13 defendant's wallet. That specifically is a close-up of a
14 business card belonging to, looks like, a Diana Beckman
11:52:40 15 with the National Center for Missing and Exploited
16 Children in Alexandria, Virginia.

17 Q. Was this among the items that were on the
18 defendant's person or in the possession of his car at the
19 time of his arrest?

11:52:54 20 A. These were items that were in his car at the time
21 of his arrest.

22 Q. All right. Now, showing you Page 32, what do we
23 see there?

24 A. These are miscellaneous items, a bottle of cologne,
11:53:23 25 some gum or mints, a pill bottle, two pens, earplugs or

1 earphones, and a then roll of mints and a paper bag.

2 These were items found in the vehicle as
3 well.

4 Q. All right. Thank you.

11:53:45 5 Now, let's talk about that iPhone for a
6 moment.

7 Was the iPhone forensically examined?

8 A. Yes, it was.

9 Q. And could you please tell the jury how that occurs?

11:53:56 10 A. In this case we obtained an additional search
11 warrant for the forensic examination of the iPhone.

12 I believe on January 8th we obtained that
13 search warrant, and then I was able to examine the phone
14 forensically using a mobile forensic tool known as
11:54:19 15 Cellebrite which is an industry standard cell phone
16 extraction suite of software tools that allows us to
17 extract the data from a device into a readable format in
18 a report that we can then generate.

19 Q. Tell us what is Cellebrite, how does it work?

11:54:36 20 A. Cellebrite, as I said, is a suite of tools. It's a
21 computer program utilized by ICAC task forces, by
22 computer forensic examiners worldwide as well as various
23 corporations that need to extract data from cellular or
24 mobile devices.

11:54:51 25 The software works essentially by

1 connecting the device to the software. The software then
2 sends essentially several commands to the device asking
3 the device for text messages, images, videos, MMS
4 messages, asks for the contents of the phone.

11:55:13 5 The contents of the phone, a copy of those
6 contents are then extracted out to the software, and then
7 the software analyzes the contents of the device and
8 generates a report that we can then use to review
9 essentially the contents of the phone or the device in
11:55:26 10 question.

11 Q. All right. Now, are there different types of
12 extractions that can be performed?

13 A. There are.

14 Q. Please explain to the jury what those are.

11:55:36 15 A. There are three main types of extractions, the
16 first being a logical extraction.

17 The logical extraction is the quickest type
18 of extraction and it's the most -- the extraction that's
19 most supported by most mobile devices on the market. It
11:55:53 20 allows us to just really scrape the surface of the
21 device, grab evidence quickly, images that are there,
22 messages that are there, some of the basic content of the
23 phone.

24 A step above that is a file system
11:56:06 25 extraction which digs a little deeper, takes in

1 essentially a picture of the file system or the image of
2 the phone, and then transfers that to the analyzer
3 software.

4 And then a physical extraction would be an
11:56:21 5 in depth dive into the phone's contents in an attempt to
6 extract all of the data, all of the deleted information,
7 all of the metadata, all of the information associated
8 with that device, and then again transfer that back out
9 to the analyzer software.

11:56:42 10 Q. Although these are phones, are they also computers?

11 A. They are.

12 Q. Okay. And by that, this particular phone here,
13 Government's Exhibit 26, the Apple iPhone, is this phone
14 capable of accessing the Internet --

11:57:02 15 A. It is.

16 Q. -- in interstate commerce?

17 A. Yes, it is.

18 Q. Now, you mentioned when you described the different
19 types of extractions, you mentioned something about the
11:57:13 20 device supporting it.

21 Explain what you mean by that.

22 A. Cellebrite, as the industry standard for mobile
23 device extraction, works very closely with the cell phone
24 providers, cell phone companies to ensure that their
11:57:30 25 software can work with these phones.

1 And obviously there are hundreds of
2 thousands of different phone carriers, phone types
3 throughout the world.

4 Cellebrite has worked with these companies
11:57:41 5 in advance of the phone's release to try and be able to
6 obtain the programming information to be able to extract
7 the data from these phones.

8 So not every phone supports a logical file
9 extraction or a physical extraction. In this case the
11:57:59 10 iPhone in question here only supported a logical
11 extraction, so while we tried to conduct a physical
12 extraction or a file system extraction, those extractions
13 were unsupported by the Cellebrite tool, leaving us with
14 a logical extraction as our only means to extract the
11:58:19 15 data.

16 Q. All right. Thank you.

17 And is there -- is the amount of
18 information you can learn from a device dependent upon
19 the type of extraction you can complete?

11:58:32 20 A. Yes.

21 Q. So in terms of logical versus physical, are you
22 learning more or less with logical?

23 A. You're learning less with a logical extraction. As
24 I said, logical is really just a quick, quick preview of
11:58:50 25 the device. It may contain some deleted information from

1 the phone, but not as much as you'd get from a physical
2 extraction.

3 Q. Okay. Did you perform the examination on this
4 phone?

11:58:57 5 A. I did.

6 Q. And when you did that, was a report generated?

7 A. Yes, it was.

8 Q. All right. I'm going to put now Government's
9 Exhibit 23 on the screen.

11:59:13 10 Okay. This is the cover sheet of a 36-page
11 document?

12 THE COURT: Blow it up, please.

13 MR. FILIATRAUT: Oh, yes.

14 BY MR. FILIATRAUT:

11:59:28 15 Q. Thank you. And this would be under Tab 23 in Book
16 2 of 2, if you'd look at the paper.

17 A. Yes.

18 THE COURT: I think we're still having a
19 hard time seeing it, Mr. Filiatraut.

11:59:43 20 MR. FILIATRAUT: I'm sorry.

21 BY MR. FILIATRAUT:

22 Q. All right. There we go.

23 Please take a look on the paper form, flip
24 through Pages 1 through 36, and can you tell us if this
11:59:57 25 is the report with certain photographs attached?

1 A. Yes, it is.

2 Q. Okay. Is this a report that was generated by you
3 after the extraction of material from the defendant's
4 phone, Government's Exhibit 26?

12:00:25 5 A. Yes, it was.

6 Q. And is this a report that's kept in the ordinary
7 course of business of Internet Crimes Against Children
8 task force?

9 A. Yes, it is.

12:00:32 10 Q. Okay. What type of extraction was able to be done
11 on the phone?

12 A. This was a logical extraction performed on
13 January 8th, 2015.

14 Q. And after performing this logical extraction of the
15 defendant's phone -- well, first off, this is the least
16 informative extraction?

17 A. Correct.

18 Q. Okay. Did you try more informative ones?

19 A. I would have tried a physical extraction. The
12:00:59 20 device or the software would have told me that the phone
21 did not support the physical extraction, so we would have
22 moved on to the logical extraction.

23 Q. Okay. And what types of information were you able
24 to discover from the defendant's phone with the logical
12:01:12 25 extraction?

1 A. We extracted, among other things, SMS messages. We
2 extracted some MMS messages, some images that were
3 contained in the phone, some location information as far
4 as from the metadata of those images. And then just an
12:01:32 5 overview of the contents of the phone, how many SMS
6 messages, how many MMS, how many images.

7 Q. Okay. And just to be clear, what is an SMS message
8 versus an MMS message?

9 A. An SMS message is virtually a text message whereas
12:01:47 10 an MMS message would be a multi-media message containing
11 either an image or a video.

12 Q. This particular phone, Government's Exhibit 26,
13 does this have the capability of taking photographs?

14 A. Yes, it does.

12:01:59 15 Q. And taking videos?

16 A. Excuse me. Yes.

17 Q. Please explain to the jury what metadata is.

18 A. Metadata is essentially just data that's embedded
19 inside of a file.

12:02:12 20 In the case of an image, the metadata may
21 contain the type of phone that was used to take the
22 image, it may contain the hash value, it may contain the
23 latitude and longitude of where the photo was taken, just
24 data that's sort of embedded inside of those files.

12:02:30 25 Q. Now, with this extraction, were you able to tell

1 what apps, applications, apps, were on the phone?

2 A. The logical extraction did provide us with a list
3 of 60 applications that had been installed or were
4 installed at one point.

12:02:51 5 Q. Okay. Was -- are you familiar with text messaging
6 and social messaging apps such as Google Voice and KIK?

7 A. Yes.

8 Q. Okay. Was the KIK app on this phone?

9 A. Based on my examination, it was not.

12:03:12 10 Q. I'm sorry?

11 A. It was not, no.

12 Q. Okay. The logical extraction, was it able to tell
13 you whether previously apps that were on the phone were
14 deleted?

12:03:22 15 Could it tell you that information?

16 A. The extraction did not indicate, of those 60 apps
17 listed, it did not indicate that there were any that had
18 been deleted.

19 Q. Okay. Is that one of the limitations of logical
12:03:41 20 versus physical extractions?

21 A. Yes.

22 Q. Explain that to the jury.

23 A. Well, there may be other -- as I said, the logical
24 doesn't necessarily extract all of the data, all of the
12:03:52 25 deleted data, data that may reside in unallocated space

1 or deleted space, as we would call it.

2 The possibility that if the phone were
3 supported, or we were able to do a physical extraction at
4 a later date, we may find more evidence of deleted files,
12:04:09 5 deleted applications, deleted messages.

6 Q. Okay. Now, are you -- please, are you aware of
7 text messaging apps as opposed to using the phone for
8 text messaging purposes by itself?

9 A. Yes.

12:04:25 10 Q. Can you explain the difference between those two
11 things for the jury?

12 A. Well, most, most cell phones nowadays would come
13 with the ability to send a text message right from the
14 phone without needing to install a separate app.

12:04:36 15 So you would be communicating through your
16 cell phone provider and their text messaging capabilities
17 or limitations.

18 Newer phones obviously allow you to
19 download apps, have the ability to allow you to install
12:04:52 20 an app like KIK or Text Me Now or What's App, that would
21 allow you to text outside of the traditional Internet
22 service provider, allow you to text if you're on wi-fi,
23 maybe offer you some additional bells and whistles,
24 emoticons, things that would allow you to have a better
12:05:21 25 text messaging experience, if you will.

1 Q. Now, if someone is using a text messaging app as
2 opposed to the phone's text messaging abilities itself,
3 would the data of those text messages be stored within
4 the app or on the phone?

12:05:32 5 A. It depends. Typically that information is stored
6 within the app, but again it would depend on the type of
7 extraction that we would do.

8 As far as physical extraction would dig a
9 little deeper into those messages, associate them with
12:05:48 10 other applications as opposed to this logical extraction
11 where we're sort of grabbing the text messages from the
12 cell phone texting service instead.

13 Q. All right. Thank you. Now, of the items that you
14 were able to extract, were any of them -- well, let me
12:06:17 15 step back for a second.

16 Did any of the information extracted from
17 this phone support the idea that this defendant traveled
18 from Virginia to Cleveland on the day in question?

19 A. Yes, it did.

12:06:33 20 Q. Explain that to the jury.

21 A. We found, in addition to several hundred messages
22 sent and received that talked about the defendant
23 traveling, indications of the undercover officer's cell
24 phone found within the -- or cell phone number found
12:06:50 25 within the device as well indicating those conversations,

1 we also found several images that had data associated
2 with them with latitude and longitude coordinates that
3 ranged from just east of Pittsburgh on the Pennsylvania
4 Turnpike to the area of, I believe, 271 and 71 on the
12:07:11 5 Ohio Turnpike, images where that data indicated that
6 those images were taken during the course of that trip.

7 Q. Okay. Now, before we get to that, you mentioned
8 first messages between your investigator and the
9 defendant.

12:07:27 10 A. Yes.

11 Q. Are you aware that your investigator was using
12 Google Voice, a Google Voice account to communicate with
13 the defendant?

14 A. I was, yes.

12:07:40 15 Q. All right. And were all communications to and from
16 her account on Google Voice memorialized and kept as
17 evidence?

18 A. They were.

19 Q. All right. So would you expect then that the
12:07:55 20 messages you found from the defendant's phone to your
21 investigator's phone through the Google Voice, her Google
22 Voice phone number, were on this extraction of the
23 defendant's phone?

24 A. I would expect to find them, yes.

12:08:08 25 Q. Okay. However, if he was using a messaging app as

1 opposed to the phone itself, was that found in this
2 extraction?

3 A. I'm not sure I can answer that.

12:08:30

4 Q. Okay. Now, let's get back to the pictures you
5 mentioned.

6 And I'm going to put up Page 5 of your
7 report. What do we see here?

8 Let's focus on the top half of Page 5 here
9 for a moment. What do we see here?

12:08:49

10 A. The top of Page 5 is simply a graphical
11 representation. It's a world map. If you look closely,
12 you will see several small red dots around the area of
13 Pennsylvania, Ohio, the Great Lakes.

12:09:07

14 Those dots correspond to the five locations
15 that are listed below under the category "Locations," the
16 subcategory "Media locations."

17 These media locations refer to images that
18 were found on the device that have latitude and longitude
19 coordinates as part of the metadata or the data.

12:09:28

20 Q. Okay. So scrolling down here, how many images were
21 on the defendant's phone that showed location?

22 A. There are five image files or JPEG files that are
23 listed that contain latitude and longitude coordinates.

12:09:47

24 Q. All right. And were those images able to be
25 extracted from the phone along with the metadata that

1 accompanied them?

2 A. They were, yes.

3 Q. Okay. So now I'm going to put up Page 17.

4 Okay. Now, let's focus on the top half

12:10:13 5 here. What do we see here on the top half of Page 17 of
6 the report?

7 A. Page 17 deals with the data files. And as I said,
8 Cellebrite will extract the information and put it into
9 certain categories based on the type of device.

12:10:27 10 In this case obviously there are data files
11 that are part of the phone. The subcategory for this
12 page would be then "Images" and there are five images
13 listed on Pages 17 and then -- or, I'm sorry, four on 17,
14 one on 18. Those would be images that were recovered
12:10:45 15 from the -- from the device.

16 Q. Okay. Now, were these images recovered and were
17 the GPS coordinates that accompany the image also
18 recovered from the phone?

19 A. Yes, they were.

12:11:02 20 Q. Okay. And then let me -- I'd like for you to
21 keep -- on Page 17, does it show the date and time that
22 these photos were taken as well?

23 A. Yes, it does.

24 Q. All right. And for all five of these images, what
12:11:36 25 was the date on which they were taken?

1 A. They were all taken January 5th, 2015.

2 Q. Okay. So now I'm going to turn to Page 28.

3 What do we see here on Page 28? Is this
4 one of those images?

12:12:04 5 A. 28 is a screenshot showing a map of the,
6 essentially, the eastern, northeastern United States with
7 the words "Jordan's Family Restaurant, five hours, eleven
8 minutes, 341 miles" at the top.

9 Q. Okay. Was this screenshot taken by the defendant's
12:12:28 10 phone on his phone?

11 A. Yes, it was.

12 Q. And was this screenshot communicated to Agent
13 Helmick?

14 A. Yes, it was.

12:12:36 15 Q. Was it communicated to her as the defendant was
16 driving?

17 A. That I do not know.

18 Q. All right. Next page, Page 29.

19 Is this another one of the images from the
12:12:57 20 defendant's phone?

21 A. Yes, it is.

22 Q. Okay. And did this image have along with it GPS
23 coordinates?

24 A. Yes, it did.

12:13:11 25 Q. So and explain to the jury how that works.

1 If someone's got that enabled on their
2 phone, particularly an iPhone in this case, what happens?

3 A. When you have your location or your GPS services
4 turned on, the soft -- the device would basically attach
12:13:31 5 the latitude and longitude coordinates to that photo once
6 it was taken.

7 Q. So would that show where the device was
8 geographically when the photograph was taken?

9 A. Yes. Correct.

12:13:45 10 Q. Okay. Do we have that for this particular photo?

11 A. We do, yes.

12 Q. Okay. So the next page there, Page 30, is this the
13 GPS coordinates where the previous page, the picture of
14 the map, was taken?

12:14:07 15 A. It appears to be, yes.

16 Q. All right. And there is a red dot. What does it
17 show, where was the phone when the picture was taken?

18 A. It appears to be just east of Interstate 70 on the
19 Pennsylvania Turnpike which is the New Stanton service
12:14:28 20 plaza.

21 Q. And is that along the same line of travel as we saw
22 on the screenshot showing from Virginia to Jordan's
23 Family Restaurant?

24 A. Yes, it is.

12:14:38 25 Q. Okay. Going to the next page, Page 31, what do we

1 see there?

2 Is it another picture from the defendant's
3 phone?

4 A. Yes, it is.

12:14:59 5 Q. Okay. And do we have GPS coordinates for this
6 picture?

7 A. Yes, we do.

8 Q. Now showing you Page 33, where was the picture of
9 the Turnpike receipt taken?

12:15:27 10 A. This picture was taken again on the Pennsylvania
11 Turnpike northwest of Pittsburgh at the 79, where
12 Interstate 79 crosses the Pennsylvania Turnpike in the
13 area of Cranberry, Pennsylvania.

14 Q. And was that also along the same line of travel
12:15:50 15 that we saw on the screenshot from Virginia to Jordan's
16 Family Restaurant?

17 A. Yes, it was.

18 Q. Going to the next photograph from the defendant's
19 phone, Page 34, do you recognize that photograph?

12:16:11 20 A. Yes, I do.

21 Q. Okay. And let's -- what do we see in that picture?

22 A. That picture depicts a sign on the Ohio Turnpike
23 which reads "77 Cleveland Akron two miles."

24 That is approximately or near the area of
12:16:34 25 where the -- where the Ohio Turnpike crosses over 271 and

1 just -- just east of the 77 exit on the Ohio Turnpike.

2 Q. Okay. And was this another picture taken by the
3 defendant's phone?

4 A. Yes, it was.

12:16:51 5 Q. And do we have GPS coordinates showing where that
6 was taken?

7 A. Yes, we do.

8 Q. Putting up Page 35 there, is that what we see in
9 that picture?

12:16:59 10 A. Yes.

11 Q. Okay. And finally, with regard to locations, the
12 map that you had in your report, if -- can that then be
13 blown up to show the dots of all of those pictures taken
14 where they were?

12:17:32 15 A. I don't believe it can.

16 Q. Okay.

17 A. Are you talking about the map on Page 5?

18 Q. Right. Or was there another map perhaps that
19 showed all of them in a more close-up fashion?

12:17:46 20 A. I don't know. I've never tried to blow up the map.

21 It's always been there to sort of give you,
22 as I say, a graphical representation of where of -- where
23 the dots would fall.

24 Q. Okay.

12:18:05 25 A. Although to clarify, in the report it does say

1 below the map "Open in Google Earth or open in Google
2 Maps," so that would typically indicate that you could
3 open that map and the plots would appear on a Google Map
4 image, which you could then blow up.

12:18:22 5 Q. There we go. All right. And was that done in this
6 case, looking at the next page, Page 36?

7 A. Yes, it was.

8 Q. All right. And let's show that Page 36 there.

9 Are those red dots corresponding to where
12:18:43 10 the pictures were on the defendant's phone when they were
11 taken according to their own GPS metadata?

12 A. Yes, they were.

13 Q. And does that correspond to the screenshot of the
14 defendant's line of travel from Virginia to Jordan's
12:19:01 15 Family Restaurant?

16 A. Yes, it does.

17 Q. Okay. Last few questions here about this report.

18 These messages, the messages to and
19 from -- or the messages that were recovered from the
12:19:27 20 defendant's phone, did it show messages to and from
21 Investigator Helmick?

22 A. Yes, it did.

23 Q. And did those messages correspond with the evidence
24 she gathered in this particular case, this particular
12:19:42 25 investigation?

1 A. Yes, they do.

2 Q. All right.

3 MR. FILIATRAUT: Thank you. No further
4 questions, Judge.

12:20:02 5 THE COURT: Thank you, Mr. Filiatraut.
6 May I see counsel briefly, please?

7 (Proceedings at side-bar:)

8 THE COURT: Okay. We'll break for lunch
9 obviously.

12:20:16 10 MR. GREG McCORMACK: Sure.

11 THE COURT: We're all hungry.

12 Greg, anticipated time for cross?

13 MR. GREG McCORMACK: Oh, short. 15, 20
14 minutes, sir.

12:20:23 15 THE COURT: Okay. All right. Let's talk
16 about what we're going to do after this.

17 We'll do exhibits, 29, get that over with.
18 And what's your preference as far as when to charge and
19 do close; tomorrow morning? Or do you think we can
12:20:46 20 squeeze it in today?

21 MR. GREG McCORMACK: Do it today.

22 MR. McDONOUGH: Today would be great.

23 THE COURT: Okay.

24 MR. GREG McCORMACK: Do you advise him on
12:20:53 25 the record of his right to testify?

1 THE COURT: I'd like to.

2 MR. GREG McCORMACK: I would definitely
3 like you to.

12:21:00

4 THE COURT: I planned on it, especially in
5 this case.

6 MR. GREG McCORMACK: Okay.

7 THE COURT: Okay. We'll do that.

8 Okay. Let's take an hour for lunch and you
9 have the revised jury instructions.

12:21:12

10 MR. McDONOUGH: We did and e-mailed a copy,
11 and so if there's -- do we get a printout?

12 THE COURT: Did you get a chance to look at
13 that?

12:21:23

14 MR. JARRETT McCORMACK: We don't have a
15 hard copy.

16 THE COURT: Okay. Start glancing at it.
17 We'll obviously go over that, and it will take us a
18 little while to make copies, but if we can wrap it up
19 today, that would be great.

12:21:32

20 MR. GREG McCORMACK: Yes, sir.

21 MR. McDONOUGH: Yes.

22 THE COURT: Okay. Let's eat.

23 (End of side-bar conference).

12:21:39

24 THE COURT: Time for lunch, ladies and
25 gentlemen. We are on track to not only finish the

1 testimony in this case, but we are going to try to give
2 you this case today. Okay?

3 That's our goal. We'll see how things
4 transpire in the next hour or so, but we hope to do that.

12:21:57 5 So let us work on that, and we'll send you
6 to lunch, get something to eat, and be back in the jury
7 room at 25 after 1:00.

8 (Jury out).

9 THE COURT: We are adjourned.

12:22:35 10 (Luncheon recess taken).

11 (Proceedings adjourned at 12:22 p.m.)

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1 WEDNESDAY, DECEMBER 2, 2015, 1:37 P.M.

2 THE COURT: Please be seated, ladies and
3 gentlemen.

4 We're on cross, Mr. McCormack.

13:37:59 5 MR. GREG McCORMACK: Thank you, Your Honor.

6 CROSS-EXAMINATION OF DAVID FRATTARE

7 BY MR. GREG McCORMACK:

8 Q. Good afternoon, sir.

9 A. Good afternoon.

13:38:02 10 Q. Let's talk about the search of the vehicle first.

11 On the photographs and on the inventory,
12 we've seen there's a pill bottle, is that correct?

13 A. Yes.

14 Q. In that pill bottle, did you have the pills
15 analyzed or not?

16 A. I do not believe we did.

17 Q. Okay. There's no report back that there's any type
18 of illegal pills or any what we call roofies or anything
19 else, correct?

13:38:26 20 A. Not to my knowledge.

21 Q. All right. Were there any girl's underwear located
22 in the vehicle?

23 A. No.

24 Q. And were there any clothing, suitcase, men's
13:38:37 25 clothing or anything else in the vehicle?

1 A. I don't believe so.

2 Q. All right. Now, on the cell phone that was
3 recovered, the cell phone belonging to Mr. Vickers, you
4 said you conducted a Cellebrite examination on that
13:38:53 5 phone, is that correct?

6 A. Yes.

7 Q. All right. Now, I understand that a logical
8 forensic examination was done on the cell phone, correct?

9 A. Yes.

13:39:02 10 Q. Now, can you tell from that forensic evaluation
11 that was done, whether or not that cell phone actually at
12 any time had any child pornography on it whatsoever?

13 A. I did not see any.

14 Q. Okay. So you cannot say that that cell phone was
13:39:24 15 used by David Vickers to distribute or send child
16 pornography at all, correct?

17 A. Correct.

18 Q. And can you tell whether or not that child -- that
19 cell phone actually contained the app KIK?

13:39:39 20 A. I cannot, no.

21 Q. All right. So that cell phone, you cannot relate
22 to having any involvement with the offense of
23 distribution of child pornography whatsoever, correct?

24 A. Yes.

13:39:55 25 Q. So other than the testimony of Investigator

1 Helmick, do you have anything to specifically relate
2 Mr. Vickers to the offense of distributing child
3 pornography?

4 A. I do not.

13:40:11 5 Q. All right. Now, with Investigator Helmick, I
6 understand that she was new to your investigation team
7 totally approximately, what, two, three months prior to
8 this investigation?

9 A. Yes.

13:40:27 10 Q. And the specific training that she received to be
11 an investigator on this task force was what?

12 A. At that point she would have been receiving
13 on-the-job training from other undercover investigators,
14 investigators who would have been overseeing her
13:40:48 15 investigations as well as myself overseeing these
16 investigations.

17 But up until that point, most of what she
18 would have been trained in would have come from myself as
19 well as some other ICAC investigators.

13:41:00 20 Q. Who was her actual supervisor; was that you?

21 A. Yes.

22 Q. So you were her direct supervisor, correct?

23 A. Yes.

24 Q. Okay. So prior to the investigation involving
13:41:08 25 Mr. Vickers, how many other investigations of this nature

1 was she involved in?

2 A. I couldn't say. Maybe a few --

3 Q. Okay.

4 A. -- at least.

13:41:20 5 Q. Was she involved in any others that resulted in an
6 arrest prior to Mr. Vickers?

7 A. I believe so.

8 Q. And on those occasions, those other investigations,
9 did they all involve the same scenario where she was
13:41:36 10 acting out as a mother involving a child being portrayed,
11 also?

12 A. I don't recall. Either that, or just simply as a
13 child.

14 Q. All right. Now, were there protocols that were
13:41:53 15 utilized as far as how to handle a situation if the
16 target of the investigation became more interested in her
17 as the mother of the child, than in the child?

18 A. I wouldn't say so much as protocols as more as a
19 decision on the part of the investigator.

13:42:12 20 Q. Okay. So was it up to the investigator, Special
21 Investigator Helmick, to decide how to handle this?

22 A. For the most part, but it would require some
23 discussions with myself if she ran into some issues
24 where, like you said, the subject of the investigation
13:42:30 25 was more interested in the adult.

1 Obviously with our focus being on child
2 exploitation, it's up to the investigator to sort of
3 determine whether that individual is, in fact, interested
4 only in the adult, or the adult and the child.

13:42:46 5 Q. Now, as a supervisor, this is something you would
6 absolutely insist upon being made aware of, is that
7 correct, if that situation occurred?

8 A. At some point.

9 Q. Now, my understanding is that you were made aware
13:43:03 10 of the actual substance of the chat conversation, the
11 physical communications, the written communications that
12 took place between Mr. Vickers and Special Agent Helmick
13 prior to the arrest taking place, prior to the actual
14 traveling involved, correct?

13:43:17 15 A. Yes.

16 Q. And that was on January 5th, so you would have been
17 made aware of that once you knew that actual travel was
18 going to take place, correct?

19 A. Correct.

13:43:27 20 Q. Okay. And I understand that you became aware of
21 that travel was going to take place literally the day,
22 the day of the travel, January 5th, correct?

23 A. I'm not sure of the exact date.

24 Q. All right. Well, the chat messages, I mean the
13:43:46 25 jury is going to have the chat messages, and those chat

1 messages would indicate when the agent, the investigator
2 became aware that he was going to be traveling on that
3 date, which I believe was January 5th itself?

4 A. You're correct, yeah, I would have known the actual
13:44:00 5 date.

6 Q. Once the investigator knew that he was traveling
7 that date, correct?

8 A. Correct.

9 Q. Okay. So and it was a pretty quick on-the-spot
13:44:08 10 scenario, "Hey, he's kind of on his way," correct?

11 A. I believe there were some prior communications
12 indicating that there might be a travel arrangement
13 either the 5th or the day before.

14 Q. Okay. But prior to that, if the investigation
13:44:24 15 started on December 12th, 2014 until on or about the
16 travel date of January 5th, 2015, would it be fair to say
17 that you really had no direct communications or oversight
18 of the investigator as far as seeing the actual chats
19 going on back and forth between her and Mr. Vickers?

13:44:44 20 A. It's hard to say. I would have, based on what
21 Investigator Helmick would have been telling me during
22 the course of the investigation, if she indicated that it
23 looked like the subject was going to travel, that's
24 usually at the time where I would request to see the
13:45:00 25 conversations from the beginning up to that point.

1 Q. Okay. Be fair to say, however, that you never
2 became aware of any potential issues with Mr. Vickers
3 becoming more interested in Special Agent Helmick than in
4 the girl Katie, correct?

13:45:15 5 You never became aware of that?

6 A. Other than a review of the conversations, no.

7 Q. Okay. Well, tell me about the review of the
8 conversations.

9 Were you at any time made aware that the
13:45:25 10 agent herself became concerned that Mr. Vickers was more
11 interested in her than he was with Katie?

12 A. I think some of the conversations seemed to
13 indicate a back and forth nature, if you will, based on
14 the conversations between the adult as well as the child.

13:45:42 15 Nothing that caused me concern as far as
16 the belief that he was traveling to engage in sexual
17 activity with the adult, though.

18 Q. Okay. Did she ever have -- and by "She," did
19 Investigator ever indicate to you that she had concerns
13:46:00 20 that in actuality he was more -- "He" being
21 Mr. Vickers -- he was more interested with her than he
22 was with Katie?

23 A. I'm sure we had a conversation about some comments
24 that he may have made, but I don't believe they were
13:46:15 25 concerns.

1 Q. So she never indicated having any concerns?

2 A. Investigator Helmick?

3 Q. Correct.

4 A. No.

13:46:21 5 Q. Okay. Now, did she at any time ever bring to your
6 attention the fact that she, or a concern that she
7 thought the investigation should be shut down --

8 A. No.

9 Q. -- with Mr. Vickers?

13:46:41 10 If I may show you Government Exhibit 20,
11 Page 53, had you seen this specific chat before?

12 I'm pointing down to this particular area
13 here (indicating).

14 A. Yes.

13:47:08 15 Q. Okay. You saw that before?

16 A. Yes, I have.

17 Q. Okay. Tell me when you would have seen that
18 before.

19 A. I don't recall.

13:47:15 20 Q. Okay. So something you've just seen recently
21 preparing for this trial, or is this something you saw
22 during the course of the investigation?

23 A. I would have seen it during, during the course of
24 the investigation.

13:47:27 25 Q. Now, does this indicate to you at that particular

1 point when you saw this that the agent or Investigator
2 Helmick in her mind had concerns that she was putting --
3 the situation where she was putting ideas in this
4 individual's head that he would be doing and saying
5 things that he did not want to do?

13:47:54

6 A. No.

7 Q. Even though she said that to him?

8 A. Correct.

9 Q. All right. Now, when an individual who's a target
10 of an investigation says that he wants to shut it down,
11 he wants to stop it, how should the investigator handle
12 it at that particular point?

13:48:19

13 Should the investigator at that particular
14 point try to keep it going?

13:48:33

15 A. I mean, typically the investigator may ask some
16 questions, some follow-up questions as to why that may be
17 the case, but ultimately with the number of targets that
18 we investigate at any given time, typically the
19 investigator may just sort of walk away from him or back
20 off from that investigation if the subject clearly is not
21 interested.

13:48:50

22 Q. Okay. Should the investigator in any manner try to
23 goad the individual into trying to keep it going?

24 A. I wouldn't say goad.

13:49:04

25 Q. No. Should not -- should the investigator pretty

1 much start cursing at the individual, calling the
2 individual names such as "You're an asshole"?

3 A. Well, I think that depends on the conversations
4 that come before it.

13:49:18 5 If you're talking about an investigation
6 that has spanned over several months where the subject or
7 the target has indicated a desire to engage in activity
8 with the purported child, to travel to a location,
9 obviously you would have an undercover profile as an
13:49:35 10 adult that would be somewhat upset by that, upset by
11 those conversations.

12 So I think that's certainly normal that two
13 adults talking about essentially child exploitation
14 activity, one of them would find some issue with an
13:49:53 15 individual who then suddenly said "I'm not interested."

16 Q. All right. Now, this investigation lasted a total
17 of three weeks, is that correct?

18 A. I believe so, yes.

19 Q. All right. I'm going to show you what's been
13:50:07 20 marked as Government's Exhibit 20, Page 82.

21 Now, here as you can see Mr. Vickers is
22 indicating that he had second thoughts and indicates
23 that, "I don't think I can morally do this. After all, I
24 was trying to get with you more than anything, but the
13:50:23 25 more I wrap my brain around it, I was saying and doing

1 things that weren't true to myself just to impress you
2 instead. Most of the things I said weren't true after
3 all."

4 And your agent responds "Awesome, I knew
13:50:36 5 you were like the last guy. You're an asshole."

6 Is that what you expect your agents to be
7 doing and saying in response to somebody indicating he
8 can't do this?

9 A. In terms of this investigation, certainly.

13:50:45 10 Q. Oh, so this is how you expect your agent to
11 respond, correct?

12 A. In this case, I would say yes.

13 Q. Okay. Why is that?

14 A. Well, again, you have an individual who has
13:50:54 15 previously expressed an interest, he's engaged in these
16 conversations with our undercover officer, and he says,
17 you know, again he has second thoughts.

18 So I would certainly believe that an
19 undercover officer posing as an adult interested in child
13:51:10 20 exploitation would take some offense to someone that she
21 thought she was developing a trust with suddenly deciding
22 he didn't want to do this.

23 Q. Okay.

24 A. It wouldn't really fit our undercover persona to
13:51:23 25 say "Okay, no big deal. I'm a police officer."

1 I mean, that's taking it a little far, but
2 we have to pose as sort of a deviant segment of the
3 population in terms of these undercover investigations.

4 The Internet is not nice. It contains
13:51:40 5 explicit language, explicit actions, and it certainly
6 contains swear words.

7 Q. So if the individual says "I'm done with this, I
8 don't want to be involved with this," you expect your
9 agent to be basically saying, "Hey, you're an asshole,"
13:51:55 10 and basically try to egg him on into keep going, that's
11 what you would expect?

12 A. I wouldn't say they're egging him on.

13 Q. Okay. All right. Now, showing you Page 83, your
14 agent indicates again at a later point when he's trying
13:52:11 15 to pull out of this thing, "You're jacking me around and
16 I don't appreciate it. I'll send a picture, you wouldn't
17 come. You just been fantasizing jacking off this whole
18 time, haven't you? But when it comes time to follow
19 through, you're a big pussy."

13:52:28 20 Again that's in concert with how you expect
21 your agents to handle this, correct?

22 A. We conduct a number of investigations where
23 individuals clearly are just, as we would say,
24 fantasizing or role playing or as this references here
13:52:39 25 sitting at home and masturbating.

1 So I believe clearly that line is certainly
2 relevant, something I would expect an adult to say if
3 they thought they were engaged in a conversation with
4 another individual who suddenly said, you know, "Maybe
13:52:53 5 I'm not into this."

6 Q. Okay. All right. So now, do you expect your
7 agents to be in any manner enticing a target in an
8 investigation to be interested in the agent sexually?

9 A. Well, that depends on the time and place that it
13:53:22 10 occurs in the conversation.

11 We would never want our investigators to
12 entice or escalate a subject at the very beginning of the
13 investigation. In fact, we always tell our investigators
14 not to initiate those first conversations.

13:53:36 15 However, if the subject or the target of
16 the investigation starts talking about sex, starts asking
17 for certain things such as pictures or videos or proof of
18 the child, we may respond accordingly at that point.

19 Q. Well, should the investigators lead the agent -- or
13:53:53 20 the target to believe if the target commits the act which
21 is the subject of the investigation, that the target may
22 be able to engage in sexual activity with the agent?

23 A. Can you say that again?

24 Q. Sure. Should the agent be leading the target to
13:54:14 25 believe that if the target commits the act which is the

1 subject of the investigation, that he may be able to
2 engage in sexual activity with the agent?

3 That's not proper, is it?

4 A. I'm not sure I understand the question.

13:54:26 5 Q. All right. Let me break it down.

6 Should your agent be leading the target to
7 believe if the target commits the act which is the
8 subject of the investigation, that he may be able to
9 engage in sexual activity with the agent?

13:54:48 10 A. I, again, I'm sorry, I'm just not following you.

11 Q. You're not following me.

12 All right. Should this agent right
13 here --

14 A. Okay.

13:54:59 15 Q. -- through her conduct be leading Mr. Vickers to
16 believe if he engages in this conduct with Katie, that he
17 may be able to engage in a sexual relationship with Agent
18 Helmick?

19 A. Again that depends on -- that depends on the
13:55:17 20 conversation.

21 Q. Depends on the conversation.

22 So you think it's proper for an agent of
23 the government to entice this agent's body -- use this
24 agent's body to entice this man to commit a crime?

13:55:35 25 MR. FILIATRAUT: Objection.

1 BY MR. GREG McCORMACK:

2 Q. Yes?

3 THE COURT: Sustained. You can rephrase,
4 though, Mr. McCormack.

13:55:48 5 MR. GREG McCORMACK: All right.

6 THE COURT: Here, let's make it easier.

7 Is it within protocol to do what
8 Mr. McCormack asked, depending on the circumstances?

9 THE WITNESS: I'm not sure. I apologize,
13:56:02 10 Your Honor.

11 THE COURT: Okay. The question is is it
12 within protocol, is it permissible from your point of
13 view to have a conversation with a target, in essence,
14 "If you have sex with my daughter, you may be able to get
13:56:27 15 me in the future"?

16 MR. GREG McCORMACK: Okay.

17 A. No.

18 THE COURT: Is that fair, Mr. McCormack?

19 MR. GREG McCORMACK: That is certainly
13:56:33 20 fair.

21 No further questions.

22 THE COURT: Thank you, Mr. McCormack.

23 MR. GREG McCORMACK: Thank you, Your Honor.

24 Mr. Filiatraut.

13:56:44 25 MR. FILIATRAUT: Yes, Judge.

1 REDIRECT EXAMINATION OF DAVID FRATTARE

2 BY MR. FILIATRAUT:

3 Q. As investigators with the Internet Crimes Against
4 Children task force, is it your goal to put -- to turn
13:57:11 5 people who are just fantasizing into people who are going
6 to be acting?

7 A. No.

8 Q. Okay. Now, along those lines with the last
9 question, why is it impermissible for an agent to say,
13:57:27 10 "Here, if you have sex with my daughter, you can have sex
11 with me"?

12 A. Well, our focus is on individuals who are
13 attempting to exploit children, plain and simple.

14 Q. Right. Do you want your agents putting those ideas
13:57:48 15 into people's minds?

16 A. No.

17 Q. Okay. Did you review this case?

18 A. I did.

19 Q. Do you feel that Agent Helmick put any of those
13:57:56 20 ideas into the mind of her subject?

21 MR. GREG McCORMACK: Objection.

22 THE COURT: Overruled.

23 He can answer.

24 A. No, I do not.

13:58:03 25 Q. Now, when it comes to language being used, all

1 right, why is it permissible for an agent to use curse
2 words, rough language when speaking with a subject?

3 A. For the mere fact that I think they need to fit the
4 persona, fit in with the other users of, say, that
13:58:34 5 website or that chat room or that -- that e-mail
6 exchange.

7 You're talking about two adults who are
8 talking about something extremely explicit and something
9 that is extremely illegal. I would certainly believe
13:58:44 10 that they would talk about things in a graphic,
11 expletive-filled nature.

12 And I believe we've seen enough of that on
13 the internet through our own investigations to say that
14 that's how individuals will talk and communicate when
13:59:02 15 they're online.

16 Q. When Agent Helmick spoke with the defendant, was
17 she Miranda Helmick or was she Traci Black?

18 A. She was Traci Black.

19 Q. And when she spoke as 13-year-old Katie, was she
13:59:14 20 Miranda Helmick or was she 13-year-old Katie?

21 A. Thirteen-year-old Katie.

22 Q. What does it mean for an agent's persona to get
23 burned?

24 A. Technically that would mean either through another
13:59:31 25 individual online or through some other means outside of

1 our control, that undercover persona would be sort of
2 outed as a law enforcement officer or as a police
3 officer, where either an individual sees something on a
4 profile or in cases where we've made a prior arrest of a
13:59:53 5 target and information has gotten out about that profile,
6 to where we can no longer utilize it in an undercover
7 capacity.

8 Q. In your experience, do people who use the
9 Experience Project website chat with each other about --

14:00:08 10 MR. GREG McCORMACK: Objection, Your Honor.

11 BY MR. FILIATRAUT:

12 Q. -- law enforcement officers?

13 THE COURT: Hold on.

14 Overruled. You can answer.

14:00:19 15 A. That's happened before. I can't say specifically
16 with regards to the Experience Project, but certainly
17 there are chat rooms and websites devoted to exposing
18 undercover law enforcement operations.

19 MR. GREG McCORMACK: Your Honor, objection.

14:00:32 20 THE COURT: Overruled.

21 BY MR. FILIATRAUT:

22 Q. Let me ask you this: If Agent Helmick as Traci
23 Black had received communication from the defendant and
24 said, "You know what, you're right, I'm a police officer,
14:00:49 25 we're going to stop this right here," is the persona of

1 Traci Black useful any more?

2 A. If the defendant had said that?

3 Q. No. If --

4 A. Or if --

14:01:03 5 Q. If Agent Helmick said this, "We're going to stop
6 this because I'm a police officer"?

7 A. Yeah, we would have wasted a lot of time at that
8 point then.

9 Q. Right. And not only -- is it fair to say not only
14:01:13 10 is Traci Black burned with regard to --

11 MR. GREG McCORMACK: Objection to leading.

12 THE COURT: Rephrase. It is correct.

13 Sustained.

14 BY MR. FILIATRAUT:

14:01:19 15 Q. All right. If a persona is burned with one
16 individual, would you expect that persona to be burned
17 with others in the future?

18 A. Could be.

19 Q. Okay. In your review of your agent's activities
14:01:47 20 here, do you feel that she gave the defendant chances to
21 stop this, outs as they're known?

22 A. Absolutely.

23 Q. Do you feel she put in his mind to have sex with
24 13-year-old Katie?

14:02:13 25 A. No.

1 MR. GREG McCORMACK: Objection, Your Honor.

2 THE COURT: Overruled. He's the

3 supervisor.

4 A. No, I do not.

14:02:20 5 BY MR. FILIATRAUT:

6 Q. Is it -- in your review, were her actions proper in
7 this case?

8 MR. GREG McCORMACK: Objection, Your Honor.

9 That's calling for a final --

14:02:26 10 THE COURT: No, that's overruled. I will

11 allow it.

12 A. Yes, they were.

13 Q. Okay. Last few questions.

14 In order to send a video file to someone

14:02:47 15 using KIK, so in other words for a KIK user to receive a

16 video file through KIK, does one need an electronic

17 device such as an iPhone that can access the Internet?

18 A. Yes, they do.

19 Q. Okay. Mr. McCormack asked you about whether

14:03:08 20 there's any other evidence besides the testimony of Agent

21 Helmick regarding child pornography.

22 Not only did you review the chats between

23 Traci Black and the defendant, did you review the chats

24 between Katie Black and the defendant?

14:03:25 25 A. Yes, I did.

1 Q. And within those chats, the KIK, did, indeed, Katie
2 Black receive child pornography from the defendant?

3 A. Yes, she did.

4 MR. FILIATRAUT: Nothing further.

14:03:44 5 THE COURT: Thank you, Mr. Filiatraut.

6 Mr. McCormack.

7 RECROSS-EXAMINATION OF DAVID FRATTARE

8 BY MR. GREG MCCORMACK:

9 Q. Is Katie Black real?

14:04:04 10 A. No.

11 Q. So again, do we have any evidence other than Traci
12 as to child pornography?

13 A. Could you repeat that?

14 Q. Do we have any evidence other than Traci's
14:04:17 15 testimony concerning child pornography?

16 A. Other than the files that were between --

17 Q. Right. Other than Traci's testimony as to the
18 source of child pornography?

19 THE COURT: You mean and the investigator's
14:04:31 20 testimony.

21 BY MR. GREG MCCORMACK:

22 Q. Right. And the investigator's testimony, correct?

23 A. I'm aware of activity between the child and the
24 defendant with regards to child pornography.

14:04:38 25 Q. Okay.

1 A. Through KIK.

2 Q. I understand that. But when the agent -- I'm
3 sorry -- when the prosecutor is asking you about Katie,
4 Katie is not a person, correct?

14:04:48 5 A. Correct.

6 Q. All right. Now, this investigation could have been
7 ended without outing the special agent, correct?

8 A. Correct.

9 Q. Okay. She could have just ended it without
14:05:04 10 disclosing the fact that she was an investigator or law
11 enforcement officer, correct?

12 A. Yes.

13 MR. GREG McCORMACK: Thank you. No further
14 questions.

14:05:12 15 THE COURT: All right. Mr. McCormack,
16 thank you.

17 Ladies and gentlemen, any questions?
18 Before the witness steps down, any questions?

19 Thank you very much, sir.

14:05:24 20 THE WITNESS: Thank you, Your Honor.
21 (Witness excused).

22 THE COURT: May I see counsel, please?
23 (Proceedings at side-bar:)

24 THE COURT: Government prepared to rest?

14:05:42 25 MR. McDONOUGH: Yes, Your Honor.

1 THE COURT: Okay. I'll have you rest on
2 the record. I'll send the jury out, but after you rest,
3 and then we'll do the --

4 MR. GREG McCORMACK: Yes, sir.

14:05:53 5 THE COURT: -- 29.

6 MR. GREG McCORMACK: Defendant says no
7 evidence, he will not testify.

8 THE COURT: I'll make sure of that.

9 MR. GREG McCORMACK: Yes, sir.

14:05:59 10 THE COURT: So the instructions are being
11 printed so we're getting a jump on that, so let them
12 relax for a while, we'll go through the exhibits and get
13 rid of the legal stuff.

14 MR. GREG McCORMACK: Yes, sir.

14:06:08 15 THE COURT: Okay. All right.

16 MR. GREG McCORMACK: Sir, how do you handle
17 deliberations? Do you go past 5:00 with them?

18 THE COURT: No. No.

19 MR. GREG McCORMACK: Okay.

14:06:16 20 THE COURT: They won't, I doubt it today.
21 Usually they will come back tomorrow.

22 MR. GREG McCORMACK: Yes, sir.

23 THE COURT: What they will normally do is
24 pick a foreperson, break for the evening, come back and
14:06:27 25 start deliberating. That's what I expect, but we'll see.

1 MR. GREG McCORMACK: Yes, sir.

2 THE COURT: Okay. Thank you.

3 (End of side-bar conference).

4 THE COURT: Mr. McDonough, on behalf of the
14:06:41 5 government.

6 MR. McDONOUGH: Your Honor, on behalf of
7 the United States, we would rest pending the admission of
8 Government's Exhibits.

9 THE COURT: All right. Ladies and
14:06:48 10 gentlemen, the government has rested at this point.

11 We're going to give you a break. I have
12 some legal matters to discuss with the attorneys, and
13 we're going to be working on the jury instructions and
14 again trying to give you everything today before you go
14:07:02 15 home.

16 So let's take a break. We'll keep you
17 up-to-date on where we are and when we'll bring you back
18 into court.

19 (Jury out).

14:07:37 20 THE COURT: Please be seated, everyone.

21 As I indicated, we'll deal with exhibits at
22 the close of everything, which is I assume going to be
23 very shortly.

24 But the government has rested.

14:07:50 25 Mr. McCormack, any motions? Mr. Jarrett McCormack.

1 MR. JARRETT McCORMACK: Yes, Your Honor.
2 We would, the defense would make a Rule 29 motion for
3 judgment of acquittal at this point, Your Honor. I'll be
4 relatively brief, Judge, as far as I'll break it down
14:08:02 5 into three counts.

6 Count 1, distribution, we would submit that
7 the evidence at this point is insufficient to sustain a
8 conviction.

9 Count 2, the enticement count, Your Honor,
14:08:16 10 the defense position at this point is government has
11 failed to meet its burden to prove that the defendant
12 Mr. Vickers used the means of interstate and foreign
13 commerce to entice the juvenile here and that basically
14 the interest was in the juvenile; not the mother.

14:08:34 15 And then as far as Count 3 goes, Your
16 Honor, again pretty much the same argument there. We've
17 got the knowingly travel in interstate commerce, but what
18 his intents were and what his purposes were to do that, I
19 think the government has failed to meet their burden and
14:08:48 20 that they could not sustain a conviction based upon these
21 facts that his purpose there was to engage in illicit
22 sexual conduct with a 13-year-old.

23 Thank you, Your Honor.

24 THE COURT: Mr. McDonough, on behalf of the
14:09:02 25 government.

1 MR. McDONOUGH: Your Honor, on behalf of
2 the government, the government would ask that this case
3 go to the jury. That the government has presented
4 evidence through the Google Voice text messages, through
14:09:14 5 the KIK communications with 13-year-old Katie, through
6 the KIK communications with the mother profile and with
7 the recorded calls that there's a -- evidence as to each
8 and every element of the three counts.

9 We do have some joint stipulations
14:09:32 10 regarding Count 1, regarding the interstate and foreign
11 commerce and the fact that there were real minors as well
12 as through the testimony of Investigator Helmick and the
13 testimony of David Frattare regarding the intent, the
14 enticement, the attempt to persuade as well as traveling
14:09:55 15 from the State of Virginia to the State of Ohio.

16 Thank you, Your Honor.

17 THE COURT: Thank you.

18 The Court has listened to all the testimony
19 the government has presented at this point, and the Court
14:10:05 20 finds that there is more than sufficient evidence on each
21 element of each count such that a reasonable jury could
22 convict the defendant of all three charges.

23 Therefore, the Rule 29 motion on behalf of
24 the defense is denied.

14:10:21 25 MR. JARRETT McCORMACK: Thank you, Your

1 Honor.

2 THE COURT: Exhibits. Mr. McDonough, I'll
3 start with you. I understand you have discussed this
4 with Mr. McCormack and Mr. McCormack.

14:10:32 5 MR. McDONOUGH: Yes, Your Honor.

6 The government at this time would move to
7 admit disk 5 which is the disk of child pornography.

8 THE COURT: Are there going to be any
9 objections to the exhibits?

14:10:45 10 MR. JARRETT McCORMACK: Your Honor, I think
11 the only one we had concerns on was Exhibit --
12 Government's Exhibit Number 23. I think those have been
13 addressed.

14 MR. McDONOUGH: Yes.

14:10:55 15 MR. JARRETT McCORMACK: So I do not believe
16 beyond that, Judge.

17 MR. McDONOUGH: That is correct, Your
18 Honor.

19 THE COURT: 23 is what?

14:11:01 20 MR. GREG McCORMACK: Cell phone.

21 MR. McDONOUGH: 23 is the extraction report
22 of the iPhone, and the government will agree to make
23 redactions on that.

24 THE COURT: Let's go ahead and run through
14:11:11 25 the exhibits and we will have an agreement on the record.

1 Go ahead, Mr. McDonough.

2 MR. McDONOUGH: The agreement would be to
3 Exhibit 5, the disk with child pornography.

4 To Exhibit 9, the Experience Project chat
14:11:23 5 with David W. Vickers.

6 The Exhibit 12 which is the one-page
7 Experience Project private messages sent by David W.
8 Vickers.

9 Exhibit 17, the KIK, excuse me, KIK app
14:11:37 10 communications between David W. Vickers and Katie Black,
11 the 13-year-old daughter profile.

12 Exhibit 18, KIK app communications between
13 David W. Vickers and Traci Black, 29-year-old mother
14 profile.

14:11:52 15 Exhibit 20, the master transcript of Google
16 chats between David W. Vickers and Traci Black, the
17 29-year-old mother profile.

18 Exhibit 21, which was the photos of the
19 vehicle of David W. Vickers.

14:12:06 20 Exhibit 22, driver's license picture sent
21 by David W. Vickers.

22 Exhibit 23, which will be redacted, the
23 extraction report of the Apple iPhone of David W. Vickers
24 by David K. Frattare.

14:12:22 25 Exhibit 26, which is the -- an item, it's

1 the Apple iPhone recovered from David W. Vickers.

2 Item -- Exhibit 27, an item, the unopened
3 LG Realm Boost cell phone from the vehicle of David W.
4 Vickers.

14:12:40 5 Exhibit 28, an item, the driver's license
6 of David W. Vickers.

7 Exhibit 29, an item, the Pennsylvania
8 Turnpike receipt.

9 Exhibit 30, the inventory of the vehicle of
14:12:54 10 David W. Vickers.

11 And then Exhibit 31, recorded call number
12 one of David Vickers and Traci Black.

13 Exhibit 33, recorded call number two of
14 David Vickers and Traci Black.

14:13:05 15 Exhibit 35, recorded call number three of
16 David Vickers and Traci Black.

17 And Exhibit 37, the recorded call number
18 four of David Vickers and Traci Black.

19 The government would also be providing a
14:13:18 20 laptop that is stripped down so that if the jury would
21 like to listen to any of the recorded calls, that they
22 would have that opportunity.

23 And as well if the jury would like to view
24 the child pornography or bestiality on disk five, they
14:13:34 25 could have that opportunity as well.

1 MR. GREG McCORMACK: Did you say 12?

2 MR. McDONOUGH: 12, and 12 is a

3 one-page --

4 MR. GREG McCORMACK: Yes. I'm sorry.

14:13:43 5 That's revised 12, yes. Okay.

6 THE COURT: Okay. Either Mr. McCormack,

7 Jarrett? I just want to make sure you agree to the

8 Government's Exhibits.

9 MR. GREG McCORMACK: Yes, sir.

14:13:59 10 MR. JARRETT McCORMACK: No objection. As I

11 said, Judge, on 23 there will be the redactions.

12 THE COURT: He did mention the redactions.

13 MR. GREG McCORMACK: Yes, sir.

14 MR. JARRETT McCORMACK: Yes, sir.

14:14:05 15 THE COURT: Okay. On behalf of the

16 defense, Mr. McCormack.

17 MR. GREG McCORMACK: A, B, C, and D, Your

18 Honor; just four photographs.

19 MR. McDONOUGH: No objection.

14:14:13 20 THE COURT: Okay. All those exhibits will

21 be admitted.

22 Okay. We will deal with Mr. Vickers at

23 this point.

24 Mr. Vickers, I'm sure and I know that you

14:14:25 25 have discussed this case at length with both Mr. Greg

1 McCormack and Mr. Jarrett McCormack, is that correct?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And they have so far answered
4 all of your questions?

14:14:35 5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And I know that you discussed
7 at length that you have a constitutional right to testify
8 and a constitutional right not to testify, and no one can
9 hold that against you.

14:14:46 10 You understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: It is my understanding, and you
13 have to confirm this, that you have voluntarily decided
14 not to testify.

14:14:56 15 Is that correct?

16 THE DEFENDANT: Correct, Your Honor.

17 THE COURT: Okay. Mr. Greg McCormack, do
18 you have any concerns at all that he made a voluntary
19 decision?

14:15:04 20 MR. GREG McCORMACK: That is correct, Your
21 Honor. We have discussed this at length on numerous
22 occasions.

23 THE COURT: All right. Very well. Then I
24 will accept it as such.

14:15:10 25 Thank you.

1 MR. GREG McCORMACK: Thank you, Your Honor.

2 THE COURT: As we speak, the jury
3 instructions are being printed, and we'll see how far
4 along we are with that.

14:15:21 5 In the meantime, you can gather your
6 thoughts.

7 Mr. McDonough, how are you and
8 Mr. Filiatraut splitting? Are you splitting?

9 MR. McDONOUGH: Yes, Your Honor.
14:15:31 10 Mr. Filiatraut will be doing the opening close --

11 THE COURT: I'm sorry, I keep butchering
12 your name. Forgive me.

13 MR. FILIATRAUT: That's all right.

14 MR. McDONOUGH: Mr. Filiatraut will be
14:15:41 15 doing the opening close, and I will be doing the closing
16 close.

17 THE COURT: Very well. Estimated time?

18 MR. FILIATRAUT: Oh, I would say no more
19 than 20 minutes for me, more like 15.

14:15:52 20 THE COURT: Okay. Mr. McDonough?

21 MR. McDONOUGH: Ten minutes.

22 THE COURT: Okay. Mr. McCormack.

23 MR. GREG McCORMACK: 20 minutes to half an
24 hour, Judge.

14:15:59 25 THE COURT: Very well. That's -- that's

1 easy.

2 Okay. Let's go see where we are for the
3 printing and we'll keep you up-to-date, and we'll be good
4 to go pretty soon.

14:16:09 5 We're adjourned.

6 (Recess taken).

7 THE COURT: Please be seated, ladies and
8 gentlemen.

9 Ladies and gentlemen, as I indicated before
14:32:28 10 the government has rested its case.

11 I now turn to the defense. Mr. McCormack,
12 what is the pleasure of the defense now that the
13 government has rested?

14 MR. GREG McCORMACK: Thank you, Your Honor.
14:32:36 15 Your Honor, defense rests.

16 THE COURT: Okay.

17 MR. GREG McCORMACK: Your Honor, we do need
18 a quick side-bar, please.

19 THE COURT: Very well.

14:32:42 20 (Proceedings at side-bar:)

21 MR. GREG McCORMACK: We need to renew the
22 Rule 29 motion.

23 THE COURT: Okay. Any response?

24 MR. McDONOUGH: We incorporate our same
14:32:56 25 arguments, Your Honor.

1 THE COURT: Okay. Nothing has changed in
2 the Court's view, so the motion is denied.

3 MR. GREG McCORMACK: Yes, sir. Thank you.
4 (End of side-bar conference).

14:33:03 5 THE COURT: All right. Ladies and
6 gentlemen, all the evidence is in. You will hear no
7 further testimony.

8 Our order of business will be as follows:
9 We will start with the instructions of law, a copy of
14:33:18 10 which you have in your hands, and I will ask that you
11 read along with me.

12 And then we will have closing arguments and
13 then, finally, the last part of these instructions are
14 the procedures you must follow for your deliberations.

14:33:29 15 As you know, the government has the right
16 to argue first and last since they bear the burden in
17 this case.

18 So let's start with the instructions of
19 law. Please read along with me.

14:33:42 20 Members of the jury, now it is time for me
21 to instruct you about the law that you must follow in
22 deciding this case.

23 I will start by explaining your duties and
24 the general rules that apply in every criminal case.

14:33:53 25 Then I will explain the elements or parts

1 of the crimes that the defendant is accused of
2 committing.

3 Then I will explain some rules that you
4 must use in evaluating particular testimony and evidence.

14:34:04 5 And last, I will explain the rules that you
6 must follow during your deliberations in the jury room,
7 and the possible verdicts that you may return.

8 Please listen very carefully to everything
9 I say.

14:34:14 10 You have two main duties as jurors. The
11 first one is to decide what the facts are from the
12 evidence that you saw and heard here in court. Deciding
13 what the facts are is your job, not mine, and nothing
14 that I have said or done during this trial was meant to
14:34:30 15 influence your decision about the facts in any way.

16 Your second duty is to take the law that I
17 give you, apply it to the facts, and decide if the
18 government has proved the defendant guilty beyond a
19 reasonable doubt.

14:34:41 20 It is my job to instruct you about the law,
21 and you are bound by the oath that you took at the
22 beginning of the trial to follow the instructions that I
23 give you, even if you personally disagree with them.
24 This includes the instructions that I gave you before and
14:34:55 25 during the trial, and these instructions. All the

1 instructions are important, and you should consider them
2 together as a whole.

3 The lawyers will talk about the law during
4 their arguments. But if what they say is different from
14:35:10 5 what I say, you must follow what I say. What I say about
6 the law controls.

7 Perform these duties fairly. Do not let
8 any bias, sympathy or prejudice that you may feel toward
9 one side or the other influence your decision in any way.

14:35:27 10 As you know, the defendant has pleaded not
11 guilty to the crimes charged in the indictment. The
12 indictment is not any evidence at all of guilt. It is
13 just the formal way that the government tells the
14 defendant what crimes he is accused of committing. It
14:35:39 15 does not even raise any suspicion of guilt.

16 Instead, the defendant starts the trial
17 with a clean slate, with no evidence at all against him,
18 and the law presumes that he is innocent. This
19 presumption of innocence stays with him unless the
14:35:52 20 government presents evidence here in court that overcomes
21 the presumption, and convinces you beyond a reasonable
22 doubt that he is guilty.

23 This means that the defendant has no
24 obligation to present any evidence at all, or to prove to
14:36:06 25 you in any way that he is innocent. It is up to the

1 government to prove that the defendant is guilty, and
2 this burden stays on the government from start to finish.
3 You must find the defendant not guilty unless the
4 government convinces you beyond a reasonable doubt that
14:36:19 5 he is guilty.

6 The government must prove every element of
7 the crimes charged beyond a reasonable doubt. Proof
8 beyond a reasonable doubt does not mean proof beyond all
9 possible doubt. Possible doubts or doubts based purely
14:36:30 10 on speculation are not reasonable doubts. A reasonable
11 doubt is a doubt based on reason and common sense. It
12 may arise from the evidence, the lack of evidence, or the
13 nature of the evidence.

14 Proof beyond a reasonable doubt means proof
14:36:41 15 which is so convincing that you would not hesitate to
16 rely and act on it in making the most important decisions
17 in your own lives.

18 If you are convinced that the government
19 has proved the defendant guilty beyond a reasonable
14:37:00 20 doubt, say so by returning a guilty verdict. If you are
21 not convinced, say so by returning a not guilty verdict.

22 You must make your decision based only on
23 the evidence that you saw and heard here in court. Do
24 not let rumors, suspicions, or anything else that you may
14:37:18 25 have seen or heard outside of Court influence your

1 decision in any way.

2 The evidence in this case includes only
3 what the witnesses said while they were testifying under
4 oath, the exhibits that I allowed into evidence, and the
14:37:30 5 stipulation that the lawyers agreed to.

6 And with that let us go to the fourth-last
7 page of your instructions. It's right before the verdict
8 forms, and we'll address the stipulations.

9 Everybody see that? It says "Joint
14:37:53 10 stipulations." Okay. Let's read along together. The
11 United States and the defendant David W. Vickers hereby
12 agree and stipulate to the following:

13 One, the children depicted in the images
14 and videos contained in Government's Exhibit 5 are real
14:38:08 15 children.

16 Two, the images and videos contained in
17 Government's Exhibit 5 traveled in interstate and foreign
18 commerce.

19 Three, furthermore, the parties hereby
14:38:18 20 agree that it is not -- it will not be necessary to call
21 a custodian of records from the Experience Project to
22 testify as to the authenticity and identity of
23 Government's Exhibits 9 through 13 and 16. Defendant
24 stipulates to the authenticity and identity of
14:38:37 25 Government's Exhibits 9 through 13, 16, while reserving

1 the right to object to the admission of Government's
2 Exhibits 9 through 13 and 16.

3 And furthermore, the parties hereby agree
4 that it will not be necessary to call a custodian of
14:38:51 5 records from KIK to testify as to the authenticity and
6 identity of Government Exhibit 19. Defendant stipulates
7 to the authenticity and identity of Government Exhibit 19
8 while reserving the right to object to the admission of
9 Government Exhibit 19.

14:39:09 10 Furthermore, the parties hereby agree that
11 it will not be necessary to call a custodian of records
12 from Apple to testify as to the authenticity and identity
13 of Government Exhibit 25. Defendant stipulates to the
14 authenticity and identity of Government Exhibit 25 while
14:39:29 15 reserving the right to object to the admission of
16 Government Exhibit 25.

17 And we have the signatures of all the
18 attorneys in this case, and including Mr. Vickers, and I
19 have signed it, also.

14:39:41 20 And, ladies and gentlemen, I have ruled on
21 all the admissibility of the exhibits, so you don't have
22 to concern yourself with that at this point.

23 All right. Let's go back to Page 5 and
24 continue on from there.

14:39:53 25 I'm on Paragraph Number 3. Nothing else is

1 evidence. The lawyers' statements and arguments are not
2 evidence. Their questions and objections are not
3 evidence. My legal rulings are not evidence. And my
4 comments and questions are not evidence.

14:40:06 5 During the trial I did not let you hear the
6 answers to some of the questions that the lawyers asked.
7 I also ruled that you could not see some of the exhibits
8 that the lawyers wanted you to see. And sometimes I may
9 have ordered you to disregard things that you saw or
14:40:24 10 heard, or I struck things from the record. You must
11 completely ignore all of these things. Do not even think
12 about them. Do not even speculate about what a witness
13 might have said or what an exhibit might have shown.
14 These things are not evidence, and you are bound by your
14:40:39 15 oath not to let them influence your decision in any way.

16 Make your decision based only on the
17 evidence, as I have defined it here, and nothing else.

18 You should use your common sense in
19 weighing the evidence. Consider it in light of your
14:40:53 20 everyday experience with people and events, and give it
21 whatever weight you believe it deserves. If your
22 experience tells you that certain evidence reasonably
23 leads to a conclusion, you are free to reach that
24 conclusion.

14:41:07 25 Now, some of you may have heard the terms

1 "Direct evidence" and "Circumstantial evidence."

2 Direct evidence is simply evidence like the
3 testimony of an eyewitness which, if you believe it,
4 directly proves a fact. If a witness testified that he
14:41:25 5 saw it raining outside and you believed him, that would
6 be direct evidence that it was raining.

7 Circumstantial evidence is simply a chain
8 of circumstances that indirectly proves a fact. If
9 someone walked into the courtroom wearing a raincoat
14:41:38 10 covered with drops of water and carrying a wet umbrella,
11 that would be circumstantial evidence from which you
12 could conclude that it was raining.

13 It is your job to decide how much weight to
14 give the direct and circumstantial evidence. The law
14:41:51 15 makes no distinction between the weight that you should
16 give to either one, or say that one is any better
17 evidence than the other. You should consider all the
18 evidence, both direct and circumstantial, and give it
19 whatever weight you believe it deserves.

14:42:05 20 Another part of your job as jurors is to
21 decide how credible or believable each witness was. This
22 is your job, not mine. It is up to you to decide if a
23 witness's testimony was believable, and how much weight
24 you think it deserves. You are free to believe
14:42:21 25 everything that a witness said, or only part of it, or

1 none of it at all. But you should act reasonably and
2 carefully in making these decisions.

3 Let me suggest some things for you to
4 consider in evaluating each witness's testimony.

14:42:34 5 Ask yourself if the witness was able to
6 clearly see or hear the events. Sometimes even an honest
7 witness may not have been able to see or hear what was
8 happening, and may make a mistake.

9 Ask yourself how good the witness's memory
14:42:47 10 seemed to be. Did the witness seem able to accurately
11 remember what happened?

12 Ask yourself if there was anything else
13 that may have interfered with the witness's ability to
14 perceive or remember the events.

14:42:57 15 Ask yourself how the witness acted while
16 testifying. Did the witness appear honest, or did the
17 witness appear to be lying?

18 Ask yourself if the witness had any
19 relationship to the government or the defendant, or
14:43:08 20 anything to gain or lose from the case, that might
21 influence the witness's testimony. Ask yourself if the
22 witness had any bias, or prejudice, or reason for
23 testifying that might cause the witness to lie or to
24 slant the testimony in favor of one side or the other.

14:43:25 25 Ask yourself if the witness testified

1 inconsistently while on the witness stand, or if the
2 witness said or did something or failed to say or do
3 something at any other time that is inconsistent with
4 what the witness said while testifying.

14:43:38 5 If you believe that the witness was
6 inconsistent, ask yourself if this makes the witness's
7 testimony less believable. Sometimes it may; other times
8 it may not.

9 Consider whether the inconsistency was
14:43:51 10 about something important, or about some unimportant
11 detail. Ask yourself if it seemed like an innocent
12 mistake, or if it seemed deliberate.

13 And ask yourself how believable the
14 witness's testimony was in light of all the other
14:44:03 15 evidence. Was the witness's testimony supported or
16 contradicted by other evidence that you found believable?
17 If you believe that a witness's testimony was
18 contradicted by other evidence, remember that people
19 sometimes forget things, and that even two honest people
14:44:17 20 who witness the same event may not describe it exactly
21 the same way.

22 These are only some of the things that you
23 may consider in deciding how believable each witness was.
24 You may also consider other things that you think shed
14:44:28 25 some light on the witness's believability. Use your

1 common sense and your everyday experience in dealing with
2 other people. And then decide what testimony you
3 believe, and how much weight you think it deserves.

4 One more point about witnesses. Sometimes
14:44:44 5 jurors wonder if the number of witnesses who testified
6 makes any difference.

7 Do not make any decisions based only on the
8 number of witnesses who testified. What is more
9 important is how believable the witnesses were, and how
14:44:55 10 much weight you think their testimony deserves.

11 Concentrate on that, not the numbers.

12 There is one more general subject that I
13 want to talk to you about before I begin explaining the
14 elements of the crimes charged.

14:45:08 15 The lawyers for both sides objected to some
16 of the things that were said or done during the trial.
17 Do not hold that against either side. The lawyers have a
18 duty to object whenever they think that something is not
19 permitted by the Rules of Evidence. Those rules are
14:45:22 20 designed to make sure that both sides receive a fair
21 trial.

22 And do not interpret my rulings on their
23 objections as any indication of how I think the case
24 should be decided. My rulings were based on the Rules of
14:45:32 25 Evidence, not on how I feel about the case. Remember

1 that your decision must be based only on the evidence
2 that you saw and heard here in court.

3 That concludes the part of my instructions
4 explaining your duties and the general rules that apply
14:45:48 5 in every criminal case. In a moment, I will explain the
6 elements of the crimes that the defendant is accused of
7 committing.

8 But before I do that, I want to emphasize
9 that the defendant is only on trial for the particular
14:46:05 10 crimes charged in the indictment. Your job is limited to
11 deciding whether the government has proved each of the
12 crimes charged.

13 Also keep in mind that whether anyone else
14 should be prosecuted and convicted for these crimes is
14:46:17 15 not a proper matter for you to consider. The possible
16 guilt of others is no defense to a criminal charge. Your
17 job is to decide if the government has proved this
18 defendant guilty. Do not let the possible guilt of
19 others influence your decision in any way.

14:46:32 20 The defendant, David W. Vickers, has been
21 charged with three crimes. The number of charges is no
22 evidence of guilt, and this should not influence your
23 decision in any way. It is your duty to separately
24 consider the evidence that relates to each charge, and to
14:46:49 25 return a separate verdict for each one.

1 For each charge, you must decide whether
2 the government has presented proof beyond a reasonable
3 doubt that the defendant is guilty of that particular
4 charge.

14:46:59 5 Your decision on one charge, whether it is
6 guilty or not guilty, should not influence your decision
7 on the other charge.

8 Next I want to say a word about the dates
9 mentioned in the indictment.

14:47:14 10 The indictment charges that the crimes
11 occurred on or about specific dates. The government does
12 not have to prove that the crimes happened on that exact
13 date. But the government must prove that the crimes
14 happened reasonably close to that date.

14:47:32 15 Next, I want to explain something about
16 proving a defendant's state of mind.

17 Ordinarily, there is no way that a
18 defendant's state of mind can be proved directly, because
19 no one can read another person's mind and tell what that
14:47:45 20 person is thinking.

21 But a defendant's state of mind can be
22 proved indirectly from the surrounding circumstances.
23 This includes things like what the defendant said, what
24 the defendant did, how the defendant acted, and any other
14:47:58 25 facts or circumstances in evidence that show what was in

1 the defendant's mind.

2 You may also consider the natural and
3 probable results of any acts that the defendant knowingly
4 did, and whether it is reasonable to conclude that the
14:48:12 5 defendant intended those results. This, of course, is
6 all for you to decide.

7 All right. Count 1 of the indictment
8 charges the defendant David W. Vickers with violating
9 Title 18, United States Code, Section 2252(a) (2) .

14:48:32 10 Specifically, Count 1 charges: From on or
11 about December 15th, 2014, through on or about
12 December 31st, 2014, in the Northern District of Ohio,
13 Eastern Division, and elsewhere, the defendant David W.
14 Vickers did knowingly distribute in interstate and
14:48:43 15 foreign commerce, numerous computer files, which files
16 contained visual depictions of real minors engaged in
17 sexually explicit conduct, as defined in Title 18, United
18 States Code, Section 2256(2), in violation of Title 18,
19 United States Code, Section 2252(a) (2) .

14:49:08 20 18, U.S.C., Section 2252(a) (2) provides:
21 Any person who, knowingly distributes any visual
22 depiction using any means or facility of interstate or
23 foreign commerce or that has been mailed, or has been
24 shipped or transported in or affecting interstate or
14:49:28 25 foreign commerce, or which contains materials which have

1 been mailed or so shipped or transported by any means
2 including by computer, or knowingly reproduces any visual
3 depiction for distribution using any means or facility of
4 interstate or foreign commerce or in or affecting
14:49:44 5 interstate or foreign commerce or through the mails if,
6 A, the producing of such visual depiction involves the
7 use of a minor engaging in sexually explicit conduct; and
8 such visual depiction is of such conduct, shall be
9 punished as provided in Subsection B of this section.

14:50:07 10 Count 1 of the indictment charges the
11 defendant with receiving and distributing a visual
12 depiction of a minor engaged in sexually explicit
13 conduct.

14 For you to find the defendant guilty of
14:50:15 15 this crime, you must find that the government has proved
16 each and every one of the following elements beyond a
17 reasonable doubt.

18 First, that the defendant knowingly
19 received or distributed a visual depiction.

14:50:24 20 Second, that the production of the visual
21 depiction involved the use of a minor engaging in
22 sexually explicit conduct.

23 Third, that the visual depiction was of a
24 minor engaging in sexually explicit conduct.

14:50:38 25 Fourth, that the defendant knew that the

1 visual depiction was of a minor engaging in sexually
2 explicit conduct.

3 Fifth, that the visual depiction was
4 received or distributed using any means or facility of
14:50:52 5 interstate or foreign commerce or had been shipped or
6 transported in or affecting interstate or foreign
7 commerce using any means or facility of interstate or
8 foreign commerce.

9 Now, I will give you more detailed
14:51:05 10 instructions on some of these terms.

11 The term "visual depiction" includes data
12 stored on a computer disk or by electronic means which is
13 capable of conversion into a visual image or data which
14 is capable of conversion into a visual image that has
14:51:24 15 been transmitted by any means, whether or not stored in a
16 permanent format.

17 The term "minor" means any person under the
18 age of 18 years.

19 The term "sexually explicit conduct" means
14:51:36 20 actual or simulated sexual intercourse including
21 genital-genital, oral-genital, anal-genital, or oral-anal
22 whether between persons of the same or opposite sex or
23 bestiality or masturbation or sadistic or masochistic
24 abuse, or lascivious exhibition of the genitals or pubic
14:51:56 25 area of a person.

1 In deciding whether an exhibition is
2 lascivious, you may consider these six factors:

3 One, whether the focal point of the visual
4 exhibition is on the child's genitalia or pubic area.

14:52:10 5 Two, whether the setting of the visual
6 depiction is sexually suggestive, i.e. in a place or pose
7 generally associated with sexual activity.

8 Three, whether the child is depicted in an
9 unnatural pose or in inappropriate attire considering the
14:52:27 10 age of the child.

11 Four, whether the child is fully or
12 partially clothed or nude.

13 Five, whether the visual depiction suggests
14 sexual coyness or a willingness to engage in sexual
14:52:39 15 activity.

16 And six, whether the visual depiction is
17 intended or designed to elicit a sexual response in the
18 viewer.

19 This list is not exhaustive, and an image
14:52:47 20 need not satisfy any single factor to be deemed
21 lascivious. Instead, you must determine whether the
22 visual depiction is lascivious based on its overall
23 content. It is for you to decide the weight or lack of
24 weight to be given any of these factors.

14:53:02 25 The term "In interstate or foreign

1 commerce" means the visual depiction crossed a state
2 line.

3 The term "Means or facility of interstate
4 or foreign commerce" includes the Internet or the
14:53:17 5 telephone.

6 The phrase "Affecting interstate or foreign
7 commerce" means having at least a minimal effect upon
8 interstate or foreign commerce.

9 The government is not required to prove
14:53:28 10 that the defendant knew that a means or facility of
11 interstate commerce would be used when he received or
12 distributed the visual depictions or the defendant was
13 involved in any way in the production of the visual
14 depiction.

14:53:40 15 If you are convinced that the government
16 has proved all of these elements, say so by returning a
17 guilty verdict on this charge. If you have a reasonable
18 doubt about any one of these elements, then you must find
19 the defendant not guilty of this charge.

14:53:55 20 Count 2 of the indictment charges the
21 defendant David W. Vickers with violating Title 18,
22 United States Code, Section 2422(b).

23 Specifically, Count 2 charges: From on or
24 about December 12th, 2014, through on or about
14:54:09 25 January 5th, 2015, in the Northern District of Ohio,

1 Eastern Division, and elsewhere, the defendant, David W.
2 Vickers, did knowingly use facilities and means of
3 interstate and foreign commerce, to attempt to persuade,
4 induce, entice, and coerce an individual who had not
14:54:25 5 attained the age of 18 years, that is a 13-year-old girl,
6 to engage in illegal sexual activity with him, in
7 violation of Title 18, United States Code, Section
8 2422(b) .

9 Count 2 of the indictment charges the
14:54:45 10 defendant with persuading a minor to engage in unlawful
11 sexual activity.

12 For you to find the defendant guilty of
13 this crime, you must find that the government has proved
14 each and every one of the following elements beyond a
14:54:56 15 reasonable doubt.

16 First, that the defendant knowingly
17 persuaded, induced, enticed, or coerced an individual
18 under the age of 18 to engage in unlawful sexual
19 activity.

14:55:06 20 Second, that the defendant used a means or
21 facility of interstate or foreign commerce to do so.

22 Third, that the defendant knew the
23 individual was under the age of 18.

24 Now, I will give you more detailed
14:55:17 25 instructions on some of these terms.

1 "Unlawful sexual activity" includes a
2 sexual act.

3 The term "Sexual act" means contact between
4 the penis and the vulva or the penis and the anus, and
14:55:33 5 for purposes of this subparagraph contact involving the
6 penis occurs upon penetration, however slight; contact
7 between the mouth and the penis, the mouth and the vulva,
8 or the mouth and the anus; the penetration, however
9 slight, of the anal or genital opening of another by a
14:55:49 10 hand or finger or by an object, with an intent to abuse,
11 humiliate, harass, degrade or arouse or gratify the
12 sexual desire of any person; or the intentional touching,
13 not through the clothing, of the genitalia of another
14 person who has not attained the age of 16 years with an
14:56:10 15 intent to abuse, humiliate, harass, degrade or arouse or
16 gratify the sexual desire of any person.

17 "Using a means or facility of interstate
18 commerce" includes the using the Internet or the
19 telephone.

14:56:22 20 It is not necessary that the government
21 prove that the sexual activity occurred.

22 If you are convinced that the government
23 has proved all of these elements, say so by returning a
24 guilty verdict on this charge. If you have a reasonable
14:56:34 25 doubt about any one of these elements, then you must find

1 the defendant not guilty of this charge.

2 Count 3 of the indictment charges the
3 defendant David W. Vickers with violating Title 18,
4 United States Code, Section 2422(b).

14:56:49 5 Specifically, Count 3 charges: On or about
6 January 5th, 2015, in the Northern District of Ohio,
7 Eastern Division, and elsewhere, the defendant David W.
8 Vickers did knowingly travel in interstate commerce, from
9 the State of Virginia to the State of Ohio, for the
14:57:03 10 purpose of engaging in illicit sexual conduct, as defined
11 in Title 18, United States Code, Section 2423(f), with
12 another person, that is a 13-year-old girl, in violation
13 of Title 18, United States Code, Section 2423(b).

14 Count 3 of the indictment charges the
14:57:28 15 defendant with traveling with intent to engage in illicit
16 sexual conduct.

17 For you to find the defendant guilty of
18 this crime, you must find that the government has proved
19 each and every one of the following elements beyond a
14:57:38 20 reasonable doubt.

21 First, that the defendant traveled in
22 interstate commerce.

23 Second, that the defendant did so with
24 intent to engage in illicit sexual conduct.

14:57:45 25 Now I will give you more detailed

1 instructions on some of these terms.

2 The term "Illicit sexual conduct" includes
3 a sexual act.

4 The term "Sexual act" means contact between
14:57:57 5 the penis and the vulva or the penis and the anus, and
6 for purposes of this subparagraph contact involving the
7 penis occurs upon penetration, however slight; contact
8 between the mouth and the penis, the mouth and the vulva,
9 or the mouth and the anus; the penetration, however
14:58:17 10 slight, of the anal or genital opening of another by a
11 hand or finger or by an object, with the intent to abuse,
12 humiliate, harass, degrade or arouse or gratify the
13 sexual desire of any person; or the intentional touching,
14 not through clothing, of the genitalia of another person
14:58:34 15 who has not attained the age of 16 years with an intent
16 to abuse, humiliate, harass, degrade, or arouse or
17 gratify the sexual desire of any person.

18 And the term "In interstate commerce" means
19 the defendant traveled across a state line. The
14:58:51 20 government is not required to prove that the defendant
21 took any steps to entice, coerce, or persuade the person
22 under 18 years of age to engage in sexual conduct.

23 If you are convinced that the government
24 has proved all of these elements, say so by returning a
14:59:04 25 guilty verdict on this charge. If you have a reasonable

1 doubt about any one of these elements, then you must find
2 the defendant not guilty of this charge.

3 All right. Ladies and gentlemen, that
4 concludes the part of my instructions explaining the
14:59:19 5 elements of the crimes. I will have you stop at this
6 point and we will have closing arguments and we will pick
7 up with the remainder of this after closing arguments.

8 On behalf of the government.

9 MR. FILIATRAUT: Thank you, Judge.

14:59:41 10 May it please the Court, counsel, and
11 members of the jury, I want to begin by sincerely
12 thanking you for your time and attention on behalf of the
13 people of the United States of America for your jury
14 service thus far.

15:00:07 15 You've given us your time, your attention
16 in this case, and in a few moments you're going to be
17 asked to go back into the deliberation room and perform
18 the essential job of the juror.

19 It's your job to settle this dispute
15:00:28 20 between the United States Government and one of your
21 fellow citizens, the defendant David Vickers.

22 We've charged him with three counts, and
23 it's our job, as the government and the prosecution, it's
24 our job and our job alone to prove each element with
15:00:50 25 evidence beyond a reasonable doubt.

1 You've heard all the elements, you've heard
2 all the evidence in this case, and I'm confident you will
3 decide that we have done just that.

4 So let me review those elements with you
15:01:06 5 and talk about the ones that I believe are most disputed
6 in this case.

7 Count 1, the defendant's charged with
8 between December 15th and December 31st of 2014, in the
9 Northern District of Ohio, Eastern Division, and
15:01:22 10 elsewhere, with knowingly distributing in interstate and
11 foreign commerce numerous computer files, which files
12 contained visual depictions of real minors engaged in
13 sexually explicit conduct.

14 So what did we need to prove here? The
15:01:41 15 defendant, in the Northern District of Ohio, this
16 division, knowingly distributed in interstate and foreign
17 commerce numerous computer files, and those files
18 contained visual depictions of real minors engaged in
19 sexual -- sexually explicit conduct.

15:02:01 20 Count 2, from December 12th, 2014 through
21 January 5th, 2015, in the Northern District of Ohio, the
22 defendant did knowingly use facilities and means of
23 interstate and foreign commerce to attempt to persuade,
24 induce, entice, and coerce an individual who was 13 years
15:02:30 25 old, attempt to do that, to engage in illicit sexual

1 activity with him in violation of the law.

2 And finally, the last count, Count 3, that
3 on January 5th of this year, in the Northern District of
4 Ohio, the defendant did knowingly travel in interstate
15:02:57 5 commerce from Virginia to Ohio for the purpose of
6 engaging in illicit sexual conduct with a 13-year-old
7 girl.

8 That's what we needed to prove. I submit
9 to you, ladies and gentlemen, that's, indeed, what we did
15:03:15 10 prove.

11 With Count 1, indeed, you had visual
12 depictions of real minors engaged in sexually explicit
13 conduct. You have children on those videos having sex
14 with adults -- we showed you a little bit of it, not all
15:03:45 15 of it -- that was sent by the defendant to both
16 13-year-old Katie and the adult mother of Katie, Traci.

17 He sent those things. He sent them.
18 You've got questions. Did he knowingly do it? Did he
19 know it was child pornography? And we have plenty of
15:04:12 20 evidence that he did.

21 Government's Exhibit 9, Page 19, in
22 discussions with Traci Black the defendant says, "Hey,
23 haven't you heard of KIK? Lot of great stuff on KIK."
24 Talking about child pornography.

15:04:36 25 He goes in depth and she asks him how old.

1 He said about 11. And then not only does he show a
2 familiarity of what is on KIK, he then sends it through
3 KIK to both Traci and, more importantly, to Katie.

4 So that shows his familiarity with what is
15:05:02 5 on KIK and then him distributing it through KIK, an
6 Internet program in interstate commerce, to, most
7 importantly, to Katie.

8 I'll get back to why he did that in a
9 moment, but the fact that he did it and he knew it was
15:05:23 10 child pornography, that's Count 1, ladies and gentlemen.
11 That's Count 1.

12 Count 2, questions, did he use facilities
13 and means of interstate and foreign commerce to attempt
14 to persuade, induce, entice, and coerce a 13-year-old
15:05:48 15 girl to have sex with him? What do we know? I don't
16 think it's going to be disputed that it's illegal in Ohio
17 for someone who's 13 to have sex with an adult male. The
18 age of consent is 16.

19 So what do we have here? We have the
15:06:11 20 defendant attempting to have sex with a 13-year-old girl.
21 That itself is illegal.

22 And what did he do? He, indeed, attempted
23 to entice, induce, and persuade Katie Black to have sex
24 with him.

15:06:35 25 And how do we know that? The questions,

1 ladies and gentlemen, of these counts is going to come
2 down to intent. Did we prove what the defendant's intent
3 was?

4 Count 2 goes along with Count 1. Not only
15:06:49 5 is he sending child pornography to who he thinks is a
6 13-year-old girl, we have what his intention is with that
7 13-year-old girl. States Exhibit -- or Government's
8 Exhibit 17, 157 pages of communications between the
9 defendant and Katie, the fake 13-year-old girl on KIK.

15:07:19 10 This is it. All of this is the defendant's
11 communications with someone he thinks is 13.

12 You want to know what his intent was with
13 Katie? Here it is. In this, in these KIK messages, he
14 sends her child pornography. He talks about her body.
15:07:57 15 He asks her questions. He wants to see pictures. After
16 the videos he sends, he says, "This is going to be us in
17 two weeks."

18 Come on. He sends a 13-year-old girl child
19 pornography, an actual child having sex with an actual
15:08:18 20 adult, and says "That will be us in two weeks." His
21 intent, ladies and gentlemen, is fairly obvious. And his
22 intent was for it to be fairly obvious to Katie.

23 He wanted Katie to know what him and her
24 mother were planning because this isn't just
15:08:49 25 conversations between the defendant and the fake

1 13-year-old, it's conversations between the defendant and
2 her fake mother Traci.

3 We know more from his intent through those
4 conversations. He talks to Traci. He meets her on the
15:09:10 5 Experience Project. This is not a mainstream website.
6 This is not a mainstream social networking site.

7 Deviant behavior occurs on the Experience
8 Project. This is one of those places where ICAC agents
9 go to investigate people, to catch people who want to
15:09:45 10 have sex with 13-year-olds. They go to the Experience
11 Project. They make a fake profile. And the
12 defendant -- and we are here, make no mistake, ladies and
13 gentlemen, we are here because of the choices the
14 defendant made. Nobody else.

15:10:08 15 David Vickers chose to be on the Experience
16 Project. David Vickers chose to strike up conversation
17 with Traci Black. David Vickers chose to continue those
18 conversations and discuss with Traci the breeding of her
19 13-year-old daughter.

15:10:31 20 David Vickers chose to communicate with
21 that 13-year-old daughter. David Vickers chose to send
22 child pornography to that 13-year-old daughter. David
23 Vickers chose to talk to her about sex, talk to her about
24 her body, ask her how much pubic hair she had, ask her
15:11:01 25 mother about her cup size, ask her about the size of her

1 boobs, and then chat with her even further.

2 What does it show us? It shows us what his
3 intent was. He intended on sending her child
4 pornography, not only to send her child pornography, but
15:11:27 5 to show her what he wanted to do, that he wanted to have
6 sex with her. That's Count 2.

7 He is enticing her. He wants her to agree.
8 And he wants her to know "This is what we are going to
9 do. And don't worry, your mom says it's okay."

15:11:53 10 Count 3, questions for you, did the
11 defendant knowingly travel in interstate commerce for the
12 purpose of engaging in illicit sexual conduct with a
13 13-year-old girl?

14 One of the questions you're going to have
15:12:11 15 back in that jury room, ladies and gentlemen, is in
16 regards to the conduct of government agents in this case.
17 They created fake profiles: The fake profile of Traci
18 Black, the fake profile of Katie Black. Why did they do
19 that? Why did Miranda Helmick do that? She did that to
15:12:39 20 catch people who want to have sex with 13-year-olds.

21 Did she put in the mind of the defendant,
22 did she make him into someone who wanted to have sex with
23 a 13-year-old, or did he want to do that himself?

24 If the sending of child pornography in
15:13:05 25 Count 1 and the talking to Katie and enticing her in

1 Count 2 don't show it, it's the traveling, the choice.
2 He chose, he chose on January 5th to get into his car and
3 drive hundreds of miles from Virginia to Cleveland, to
4 stop and take pictures along the way and send them to
15:13:31 5 Traci Black, "I'm coming. I'm coming."

6 And who did he send them to? Who is Traci
7 Black to him? Who is she to him? She is, in his words,
8 his partner in crime. From his key strokes to the jury's
9 ears, she is his partner in crime.

15:14:02 10 He found someone on the Experience Project
11 who he thought was like him, who he thought had these
12 same urges and these same desires. And you can see it,
13 you can see it December 12th as he's getting to know
14 Traci, the further he goes, the more open he gets about
15:14:31 15 himself, about his life, and about his desires.

16 He thinks he has met someone here just like
17 him. That's how you know it. That's how you know what
18 his intent was when he got in his car and drove from
19 Virginia to Ohio.

15:14:57 20 All the evidence in this case shows he
21 thought he had someone just like him and was going to
22 have sex with her daughter and she was going to play
23 along, she was going to get naked, she was going to
24 assist, and she was maybe going to have sex with him,
15:15:17 25 too.

1 But make no mistake, he went there for her.
2 And how do we know that? How do we know that? What is
3 the very last thing he says to Katie? Government's
4 Exhibit 17, Page 158, 156 and 157.

15:15:47 5 "I am horny, very. Any ideas?" Smiley
6 face.

7 That is the last thing he says to Katie
8 before he's arrested.

9 Ladies and gentlemen, judge the defendant's
15:16:14 10 conduct for what it was. Those were choices he made to
11 violate the law of the United States. We ask you to hold
12 him accountable and find him guilty.

13 Thank you.

14 THE COURT: Thank you, Mr. Filiatraut.

15:16:29 15 Mr. McCormack, on behalf of the defendant.

16 MR. GREG McCORMACK: Thank you, Your Honor.

17 Good afternoon.

18 THE CLERK: Check your mic, please. All
19 right.

15:17:28 20 MR. GREG McCORMACK: As I said when this
21 thing started, it would be unpleasant and that's kind of
22 an understatement. I want to apologize for our judicial
23 system for you having to watch what you had to watch.

24 Very, very unpleasant.

15:17:55 25 This is not a dispute in any respect. This

1 is a criminal Court of law. As the Judge said when we
2 started this case, your role as a juror is just one of
3 the ultimate responsibilities that we have as citizens of
4 the United States.

15:18:36 5 I've never had that pleasure, because I sit
6 on this side, but the responsibility you have as a juror
7 is just unbelievable because you have responsibility to
8 make a determination in this case that is just so
9 massive.

15:18:57 10 You have the responsibility to take the
11 evidence that you've heard in this case and make a
12 decision that is so profound because it has just
13 unbelievable impact upon the lives of many people, some
14 of which are not here. Most of all his sitting right
15:19:20 15 there.

16 And it's based upon the evidence, these
17 books that we have up here that you're going to get, and
18 the testimony from two witnesses in this case.

19 As the Judge says, you have to determine
15:19:38 20 the evidence based upon the credibility of witnesses.
21 That's something you would hope would be an easy task,
22 especially when you have law enforcement officers
23 testifying.

24 You don't expect law enforcement officers
15:19:55 25 to be playing games with you on the witness stand. You

1 would hope when you ask a law enforcement officer a
2 question, they would answer your question. Not sit up
3 here and say, "Look, I don't understand your question."
4 Make me ask it three or four times. Had the Judge come
15:20:16 5 in and say "Let me explain it to you a different way and
6 answer the question."

7 I mean, it's a fact that what was going on
8 here is that this young lady was basically enticing this
9 man to the point of engaging in sexual activity with her
15:20:48 10 daughter so that making him believe that he would have
11 sex with her.

12 I don't understand that. Ask it a
13 different way, I mean several different ways, both her
14 and her supervisor. "I don't understand that. I don't
15:21:18 15 understand that."

16 The Judge breaks it down to her supervisor,
17 "If you have sex with my daughter, you can have sex with
18 me. Is that within your protocols?

19 "No."

15:21:48 20 That's wrong. That's not how our
21 government works. We don't do that in the United States.
22 Whether it's an agent that has two months of service as a
23 law enforcement officer, or a supervisor who's got years
24 and years of service, we don't do that to this man. We
15:22:10 25 don't do that to anybody, a citizen of the United States

1 Government.

2 And when you go through and you read
3 170-some pages of chat conversations or KIK
4 conversations, there's some pretty darn disgusting things
5 that this man says in those conversations to Katie, a
6 girl that he clearly, when you go through the
7 Government's Exhibit 20, he clearly through the day he
8 travels on January 5th, doesn't think exists. And he's
9 asking her, the day he travels, "Send me pictures of this
10 kid next to you because I don't think she even exists."

11 That tells you what's going on. She's got
12 him so wrapped around the axle that he's doing anything
13 and everything because he has hopes that he's going to
14 get in bed with her, and that is sick. I mean, there's
15 something seriously wrong in his mind, there's no
16 question about it. This man needs help. He seriously
17 needs help.

18 But he doesn't need to go to prison for
19 this stuff.

20 MR. McDONOUGH: Objection.

21 THE COURT: Sustained. The jury will
22 disregard any comment about punishment.

23 MR. GREG McCORMACK: Yes, Your Honor.
24 Apologize.

25 He seriously needs help. But this agent

1 with two months' worth of experience who comes in and
2 testifies that she's being supervised on a daily basis,
3 that she's taking her chat conversations every single
4 day, her testimony under oath was, and she's showing her
15:24:28 5 supervisor every single day, her testimony was under
6 oath, and she's being closely supervised, which we know
7 was BS, it's not happening.

8 And she's absolutely running amuck with her
9 two months' worth of experience, and here we are.

15:25:04 10 Enticing. He's charged with Count 2,
11 enticing, enticing a 13-year-old child that does not
12 exist, that he every single -- almost every single page
13 of these communications is telling Traci, "Send me
14 something, send me pictures."

15:25:27 15 Oh, yeah. The government is going to stand
16 up. They get a second shot at argument here. I get to
17 sit down and watch this. Mr. McDonough is making notes
18 because he gets to argue. I've got to suck it up because
19 I can't say another word.

15:25:41 20 All right? But yeah, they got all these
21 pages and pages and pages of him talking to this kid who
22 he clearly is saying does this kid even exist? That's
23 known as fantasy. That's known as role playing.

24 Experience Project. What's in his mind,
15:26:11 25 who knows? But what we do know is in the Government

1 Exhibit 20 is he is constantly telling Traci "Come on,
2 give me something, give me something to indicate Katie
3 exists."

4 It's not there. It's simply not there.

15:26:36 5 But, yeah, there's enticing going on in
6 this case. It starts right from the beginning, day one,
7 December 12th.

8 Now, again, what's -- what are we doing
9 here? Who's enticing who? All right. So this is the
15:27:06 10 photograph that this thing starts out with. Right from
11 the beginning she can see he responds, "Wow, you're hot."

12 Right out of the box, she can see he's
13 interested in her, but yet how many times is she playing
14 games with me on the witness stand? Oh, he's not
15:27:36 15 interested in having sex with her, oh, no. Give me a
16 break, lady.

17 "Oh, my God, you're hot." And I guess
18 this is what's in protocol, okay? This is within
19 protocol. Who's enticing who here?

15:28:19 20 Now, at some particular point, all right,
21 in this particular case, and I am not going to go through
22 page upon page upon page and upon page in Government
23 Exhibit 20 because I did it before, and believe me,
24 there's more, where he is commenting time and time again
15:28:41 25 how sexually interested he is in her, all the way through

1 the end.

2 When we get into, I believe, it's Page 40
3 where the government in their direct examination of her,
4 obviously based I would assume on my opening statement,
15:29:10 5 they knew I was coming down this road, asked her, "Did
6 you give him an out?

7 "Well, yeah, I gave him an out because he
8 was getting interested in me."

9 And Page 36 you'll see in my -- when you
15:29:25 10 get back to the opportunity to review all this stuff,
11 you'll see where we had the wink wink comments that she
12 referred to. And in the wink wink comments, she comes
13 back and she testifies, well, she was getting real
14 concerned about this because she was saying -- he was
15:29:42 15 saying wink wink, I was concerned about this, because she
16 was concerned that he was getting more interested in her
17 than Katie.

18 So at that particular point, she wanted to
19 give him an out. And the government in their direct
15:29:59 20 examination, they kind of address that, that's an out,
21 she gave him an out at that particular point. You know,
22 the government kind of made it appear that was it and
23 they kind of dropped it right there. And as you see as I
24 addressed her in my cross-examination, it didn't stop
15:30:15 25 there, okay?

1 Now, when we had the supervisor on the
2 stand, the government made a big deal of, oh, my God,
3 yeah, she could have given him an out at that particular
4 point, but she would have -- you know, she would have
15:30:29 5 been burned at that time. "You know, how do we -- how do
6 we end this investigation at that particular point? She
7 would have been burned at that time."

8 Excuse me, you know, you don't have to say
9 "Hey, I'm a cop. You know, I'm going to end this
15:30:43 10 investigation, I'm a cop, so I'm going to get burned."

11 I mean, that's a little bit ridiculous.

12 She admitted on direct examination
13 throughout the course of these particular things, I
14 believe it was at that particular point, where she
15:30:59 15 based -- where he basically comes in and says, "Hey, I
16 can't do this. You've got me so deep into this thing
17 where I'm basically saying stuff that you want me to say,
18 you got me saying that I'm going to have sex with your
19 daughter. I don't want to do this. I can't do this. I
15:31:23 20 don't want to be involved with this. All right? I just
21 want to get out of this. I'm done."

22 And here's our two-month experience agent
23 who's just freelancing on this guy with, of course, her
24 daily supervision from her supervisor, that she's telling
15:31:42 25 us that she has here, and the supervisor says, oh, this

1 is no problem. And she admits -- she tells us that she
2 admits that at that particular point this guy's clearly
3 saying he's done, he's over with, so end it right there.

4 But, oh, no, she's got to goad him on a
15:32:11 5 little bit. "Awesome. I knew you were like the last
6 guy. You're an asshole."

7 "You're an asshole. You know, you're
8 awesome."

9 Sure, this is a fair government
15:32:31 10 investigation here. Let's just wrap this guy into this
11 thing, Mr. Vickers.

12 And of course, this is Page 82. Remember,
13 it was Page 40 that the government addressed on direct
14 examination that she gave him his out. This is 42 pages
15:32:55 15 later.

16 And we go to the next page, and of course
17 she doesn't end it right there, we know that, because she
18 goes back at him. "You know, you're just jacking me
19 around. I don't appreciate it. I'll send the pic and
15:33:17 20 you won't come. You've just been fantasizing."

21 She tells my guy, "Here you are
22 fantasizing." Everything that they've been talking back
23 and forth where he's giving her the nonstop, you know,
24 the page-by-page talking on KIK to Katie that he knows
15:33:33 25 doesn't exist and fantasy, fantasy, fantasy and she tells

1 him right here, "You're fantasizing and you've been
2 jacking off all this time, haven't you? But when it
3 comes time to follow through, you're just a big pussy."

4 Not a problem.

15:33:54 5 But something in this man's brain just
6 doesn't let loose because this is what he wants.
7 (Indicating). He doesn't have the common sense to just
8 cut this lady loose. He knows there's no Katie. All
9 right? He's being enticed, but what he knows, the only
15:34:27 10 way he's going to get to her is he's got to keep playing
11 her fantasy game with Katie. He's got to keep this Katie
12 malarky going. He's got to keep playing the Katie game
13 with this woman, all right, because that's the only way
14 she's going to talk with him.

15:34:48 15 And we see that in the 18th or 19th,
16 December communications that I talked to her about on
17 cross-examination where we had the break in conversation
18 until 22. And remember when I went over that? And
19 you'll see these in the chat rooms, okay, because we had
15:35:08 20 18, 19, 20, 21 and he keeps contacting her, he's trying
21 to contact her. Absolutely nothing.

22 But we get to 22 and he says, you know,
23 "It's really about Katie, I really want Katie. And by
24 the way, you're too old for me."

15:35:27 25 And all of a sudden, bam, here she comes

1 out of the blue again because he said the magic words,
2 all right? "It's all about Katie." And now he's
3 shooting her down, "You're too old for me, lady. I don't
4 like you any more, you're too old for me. I want Katie."

15:35:53 5 And here she comes back into his life
6 again, all right? Because she just pulled him in hook,
7 line and sinker. There's something in this man's mind,
8 all right, he's so warped that he's just playing her
9 game, and he knows the only way he's going to be able to
15:36:16 10 keep trying to get to her is he's got to keep saying what
11 she wants him to say about Katie. He's got to keep
12 talking up Katie, just like he did in all those chats or
13 those KIK messages, got to keep talking about Katie.
14 "Katie, I want to do this to you. Katie, I want to do
15:36:36 15 that to you." Keep talking about Katie.

16 And that's his only way to get to her. And
17 she says that in these text messages back and forth, in
18 these Google text messages.

19 Remember, the ultimate goal here? "The
15:36:55 20 ultimate goal is not me; the ultimate goal is Katie. As
21 long as you do Katie, okay, you'll get to me, but you got
22 to keep Katie going to get to me."

23 This is our government. This is our law
24 enforcement agency with two months' of experience under
15:37:22 25 the supervision of this agent who is playing games with

1 me on repetitive questions about the -- literally, the
2 ethics of the protocols of having an agent basically
3 literally drawing this man in with her body, sexually
4 enticing him with her body into committing a criminal
15:37:45 5 act. And he's jerking us around in the courtroom.

6 Child porn. All right. He's charged with
7 doing this during the month of December. The document
8 reads that he did it while he was in Ohio. I never saw
9 anything that indicated he was in the State of Ohio
15:38:26 10 during the month of December.

11 Why is he asking Traci what's on the videos
12 that he's sending to her if he knows what's on the
13 videos? What proof is there that he sees, that he has
14 seen what he sent to her?

15:38:56 15 What evidence is there? We don't have any
16 child porn on his phone, the phone they collected. None
17 whatsoever. There's no evidence whatsoever. All right?

18 We have the testimony of Ms. Traci Black,
19 okay. I believe her credibility is seriously questioned
15:39:20 20 in this courtroom based upon the games she's played of us
21 in this courtroom.

22 All right. So we don't have any evidence
23 as to the actual source of where those images came from.
24 We've had testimony about it. We got the phone that he
15:39:47 25 was supposedly using, but there's no evidence that it

1 came from that home. We have no evidence of any other
2 computers that he supposedly sent it from.

3 We have no evidence that he was in Ohio
4 when it was supposedly sent. We have evidence that she
15:40:05 5 is the one who suggested he go to Motherless.com.

6 We have no evidence as to any websites that
7 he supposedly got this stuff from. None. Nothing.
8 Nonexistent.

9 As a reminder, the Judge has given you an
15:40:32 10 instruction here. Again, this is not a dispute, this is
11 not a contract dispute here. This is a criminal Court of
12 law. In a criminal Court of law, the burden is right
13 here. And in this case the evidence comes from one
14 source and it's right here. Every bit of this evidence
15:40:53 15 comes from this one source right here.

16 And that's got to be a bit disturbing and
17 disconcerting in this case.

18 Now, I must admit she's very good. She can
19 talk like two different people at the same time. I mean,
15:41:15 20 she's very good at her communication capabilities. But
21 she could probably use another round of training because
22 pulling people into committing a criminal act is a bit of
23 a problem.

24 MR. McDONOUGH: Objection.

15:41:33 25 THE COURT: Sustained.

1 MR. GREG McCORMACK: Proof beyond a
2 reasonable doubt means proof which is so convincing that
3 you would not hesitate to rely and act on it in making
4 the most important decision in your own lives.

15:41:47 5 I mean, that's a pretty hefty burden. I
6 mean, that, that's the foundation of our judicial system.
7 That's some serious stuff.

8 And as the government says, the question is
9 what's on his mind, what was in his mind at that
15:42:20 10 particular point? Obviously his mind was not in the
11 right place, but, you know, there's a big difference
12 between role playing a fantasy and fantasizing about, you
13 know, what do I need to do to get with her, what do I
14 need to say to make her happy, what do I need to say to
15:42:41 15 touch this body, and to be with this body, and to go to
16 bed with this body?

17 That's a big difference between what I
18 really want to do with a kid that I -- that I don't think
19 exists. And when I cross state lines, what am I going to
15:42:59 20 do when I cross state lines?

21 All right. She suggests to him buy panties
22 for this girl. Where's the panties? If he wants to have
23 sex with her, why doesn't he buy her panties? But, of
24 course, you know, he's got to keep her happy so he buys
15:43:24 25 her -- he buys the telephone, okay? I mean, if he wants

1 to -- if he's supposed to be having sex, I mean if he
2 doesn't think the kid is there, what is he going to buy
3 panties for?

4 The child porn, again, who brings up the
15:43:54 5 subject of the child porn? Right here (indicating). All
6 right. "One of the other daddies sent Katie pictures
7 and vids." So who plants that seed in his mind? Right
8 here. All right. She plants it. She plants a seed and
9 she plants a source, Motherless.com.

15:44:35 10 Because if she plants that source, his
11 comments come back, "Oh, is that where kids are doing
12 stuff?"

13 Very, very, very troubling case. As I
14 said, there's a lot of things that Mr. Vickers says in
15:45:11 15 those chat conversations that you've just got to shake
16 your head at, but I guess unless you played a fantasy
17 game and you're into the fantasy stuff, you just don't
18 understand that.

19 But the government's got to prove that he
15:45:33 20 crossed that state line to engage in sex with a person he
21 thought was a 13 -year-old kid. All right. While he was
22 driving up there, moments before he arrived, he asked her
23 "Send me pictures of you and Katie," so moments before he
24 arrived he was telling her "I don't think Katie exists."

15:46:01 25 So you can't, you can't possibly find that

1 he was driving up here to do anything other than to be
2 with her. All right. He was really hoping, but he knew
3 that he had to be playing her game with Katie. He knew
4 he had to be selling her "Oh, it's all about Katie.
15:46:25 5 You're too ugly."

6 I guess he didn't say "You're too ugly,"
7 but "You're too old for me. I don't want you. I want
8 Katie. Wink wink. You know, I want Katie, wink wink.
9 I'm going to drive to Ohio, but I want Katie, wink wink."

15:46:46 10 Enticing? Oh, yeah, lots of enticing going
11 on in this case, right here. She enticed the heck out of
12 this guy. She enticed him right into this courtroom.
13 She enticed him right into this courtroom.

14 David Vickers is not guilty of every one of
15:47:13 15 these charges.

16 Difficult case. Again, I am truly, truly
17 sorry that you all had to watch what you all had to
18 watch. I can tell you the government hasn't in any
19 manner shown you that he's ever watched that before.

15:47:43 20 I apologize for you having to sit through
21 this case. All right. This young lady brought everybody
22 into this courtroom, most importantly him.

23 David Vickers is not guilty.

24 Thank you.

15:48:11 25 THE COURT: Thank you, Mr. McCormack.

1 Mr. McDonough, government's final close.

2 MR. McDONOUGH: This is not Fantasy Island.
3 There is no Mr. Roarke. There is no plane and Tattoo
4 mentioning it.

15:48:26 5 This is another world that is out there, a
6 world on the Internet. And in this case what you had the
7 ability to see is child pornography and bestiality that
8 came from one source, and one source only, and that is
9 David W. Vickers.

15:48:44 10 He sent it. He sent it through the KIK
11 social media app and he sent it to a 13-year-old. Why
12 did he send it? This was goal-oriented material of a man
13 who has a sexual proclivity for children and wanted to
14 have a 13-year-old watch the video.

15:49:06 15 We went into great detail in the early
16 conversations on December 12th, and it was important not
17 to take anything in this case out of context, but to
18 learn line-by-line the communications that the defendant
19 used starting first with this Experience Project, this
15:49:26 20 anonymous site for fantasy, this -- and experiences, and
21 lo and behold him reaching out and contacting an
22 undercover officer.

23 And the mission of the Ohio Internet Crimes
24 Against Children task force is to protect children from
15:49:44 25 online predators, to throw a life line, a rescue line to

1 children drowning in a sea of child sexual abuse and
2 child pornography.

3 And they play a role, and they play a role
4 well as an undercover, who knew that this world existed,
15:50:04 5 that a couple clicks away of creating an account, of
6 being on there and interacting and how quickly the
7 content went sexual.

8 The evidence in this case is about 435
9 pages of documented text messages and recorded phone
15:50:18 10 calls as well as the KIK communications to a 13-year-old
11 girl and her mother. And that gives us some insight, and
12 the evidence shows what is in the mind of the defendant.
13 How do you know? You've heard his voice, you've seen the
14 texts that we've gone through and what is in his mind.

15:50:39 15 And in going through these charges, the
16 three charges, and the first charge being distributing
17 child pornography, we have a stipulation that, number
18 one, these are real children. And unfortunately, you've
19 had an opportunity to witness these children on the worst
15:50:59 20 day of their lives. That these children are being raped,
21 that these children are bound with ropes, that they are
22 engaged in sexual intercourse against their will and
23 against their consent. These are children that are under
24 the age of 18, and in this case focusing on that range of
15:51:22 25 8 to 13 years old.

1 How do you know that the defendant sent
2 these messages? I'm going to turn you to one of the
3 exhibits, and I realize you looked at the monitors and I
4 appreciate your patience on it, but if we can have the
15:51:39 5 front table, please, and in looking at Exhibit,
6 Government's Exhibit 18, Page 29, and you'll see the
7 communication on here in the middle of the screen from
8 the defendant to the undercover mother, "Laughing out
9 loud, they are child rapists, not photographers."

15:52:13 10 In this case you have evidence and going to
11 Government's Exhibit 18, Page 57, you have the defendant
12 communicating "Laughing out loud. Is it wrong to tie a
13 child up?" And then sending that video of a child being
14 tied up, being bound, being powerless.

15:52:37 15 This is a -- the evidence shows the control
16 that is involved in the sexual abuse and exploitation of
17 a child.

18 And looking at that, was the -- what was
19 the sending of the child pornography, this, as you might
15:52:57 20 recall during some of the -- excuse me -- forgive me.

21 As you might recall, during some of the
22 testimony in this case, this defendant used a social
23 media application called KIK, and one of the features of
24 the app itself is that the videos that are sent do not
15:53:24 25 remain on the phone. Actually they remain in the app.

1 And as the communications are made via the app, that's
2 where the videos are.

3 What's interesting in this case is when the
4 phone is recovered at the time, that KIK app is no longer
15:53:42 5 on the defendant's phone. If this were just fantasy, why
6 would the defendant delete the application itself, that
7 KIK app, because it's no longer --

8 MR. GREG McCORMACK: Objection. The
9 evidence is not that he deleted the application.

15:53:59 10 THE COURT: Overruled. Could be a
11 reasonable conclusion based on the evidence.

12 Go ahead.

13 MR. McDONOUGH: In looking at the evidence
14 on here, turning to Exhibit 20, Page 98, the bottom half
15:54:17 15 of the page, and you'll see at the bottom a message, "Bad
16 news. They locked me out of my KIK account so I have no
17 way to chat with K."

18 And further, Government's Exhibit 20,
19 Page 101, bottom half of the page, third line -- fourth
15:54:42 20 line from the bottom, this is from the defendant's Google
21 Voice chat, from the defendant to Traci Black, "I don't
22 have my KIK any more and contact Katie because I don't
23 have her name for my new account."

24 Was the defendant aware of the risk?
15:55:02 25 Absolutely. If you go to Government's Exhibit 20,

1 Page 103, can you go about halfway down on the page?
2 Right there. Starting with "Put yourself in my shoes and
3 see what I am risking, understand the way that I act and
4 I do."

15:55:22 5 These are the defendant's concerns on that.

6 Turning to Government's Exhibit 20,
7 Page 104, the top half of the page, just above the
8 halfway point, "I get it, I really do, but trouble
9 defined for me in this case is like 15 years mandatory
15:55:47 10 for crossing state lines so, yeah, I'm shady because I am
11 being careful. Please understand."

12 Look at the next line. "It's federal
13 statutes."

14 He is aware of the risks, he is aware of
15:56:02 15 what's involved, and what is his intent? How do we get
16 into his mind and look at his intent? If we go to
17 Government's Exhibit 20, Page 79, talking about the top
18 half of the page, talking about the dropped travel plans,
19 about halfway down.

15:56:18 20 "I need to be in bed by 10:00, up at 4:00,
21 on the road at 4:30, five hour drive, that's the plan.
22 Katie's vagina by 11:30. Smiley face with a wink."

23 His intent. And throughout all the
24 communications -- you can go to black -- throughout all
15:56:43 25 the communications, whatever they may be, there is a

1 common thread, a common link and that is this defendant's
2 sexual proclivity for a 13-year-old.

3 And in his world, once he has that, perhaps
4 as an added bonus perhaps he'll get the mom because this
15:57:00 5 has to be too good to be true that there's a mother who
6 is putting out her 13-year-old daughter on the Internet.
7 And it is too good to be true. It's the Ohio Internet
8 Crimes Against Children task force fulfilling their
9 mission of protecting children.

15:57:15 10 And look on January 5th when it comes time
11 to travel, this defendant, he's conflicted. There's a
12 battle going on. He's got a decision to make and when
13 you cross the line, when you go from fantasy to reality,
14 that's when he gets in the car and makes the trip.

15:57:31 15 And what more does he do? He gets a gift
16 bag. It's the gift bag and it's the phone for Katie, the
17 13-year-old. That will be the gift. That is his intent,
18 to go ahead and deliver that phone to her as a gift.

19 You don't buy phones for someone who is not
15:58:05 20 real. You buy a phone for someone who is real. He's
21 conflicted and he's asking for these pictures, he's
22 asking for pictures on Katie.

23 Another common thread throughout all the
24 conversations is he wants nude pics, he wants naked pics,
15:58:18 25 he wants these pictures of Katie, not to test if she's

1 real, to go ahead and to gratify himself on it.

2 And one of the things you found on the
3 standard and protocol of the Ohio Internet Crimes Against
4 Children task force, they have standards that are
15:58:38 5 complied with, peer review, and in this case all of those
6 are followed. The government is not sending child
7 pornography. The government is not sending those things.
8 It is the defendant who is sending those things in this
9 case and who is traveling. Traveling.

15:58:50 10 When you consider all the evidence in this
11 case, and I encourage you to look through, we have played
12 portions, those representative portions of the videos, we
13 have played all the calls for you, we have laid out all
14 the text messages that we have here and there's
15:59:06 15 additional, feel free to go all through it, and at the
16 end of the day you will be firmly convinced beyond a
17 reasonable doubt that this defendant is guilty as
18 charged.

19 THE COURT: Thank you, Mr. McDonough.

15:59:17 20 Ladies and gentlemen, let's just read a
21 couple pages of the instructions and then I'll take a
22 short break with counsel at side-bar.

23 Focusing on Pages 28 and 29, please read
24 along with me.

15:59:34 25 A defendant has an absolute right not to

1 testify. The fact that a defendant did not testify
2 cannot be considered by you in any way. Do not even
3 discuss it in your deliberations.

4 Remember that it is up to the government to
15:59:44 5 prove the defendant guilty beyond a reasonable doubt. It
6 is not up to the defendant to prove that he is innocent.

7 During the trial you have seen counsel use
8 summaries, charts, or similar material which were offered
9 to assist in the presentation and understanding of the
16:00:02 10 evidence. This material is not itself evidence and must
11 not be considered as proof of any facts.

12 And I will see counsel at side-bar, please.

13 (Proceedings at side-bar:)

14 THE COURT: Okay. Guys, for the record, on
16:00:23 15 behalf of the government, any objections, additions,
16 comments to the Court's substantive instructions of law?

17 MR. McDONOUGH: No, Your Honor.

18 THE COURT: Mr. McCormack, on behalf of the
19 defense?

16:00:33 20 MR. GREG McCORMACK: No, Your Honor.

21 THE COURT: Okay. I'm going to dismiss the
22 alternates at this point and then continue on with my
23 instructions for deliberations.

24 MR. GREG McCORMACK: Yes, Your Honor.

16:00:42 25 (End of side-bar conference).

1 THE COURT: Okay. [REDACTED] and [REDACTED],
2 you are alternates in this case and looks like everybody
3 is healthy and good to go for deliberations pretty soon,
4 so we are going to excuse you with our thanks for
16:01:04 5 participating in this trial and for paying attention in
6 this case.

7 Please keep in mind that you still cannot
8 discuss this case with anyone until this jury reaches a
9 verdict. Okay? Either way. After that, you're free to
16:01:15 10 discuss it with anyone. So you can check in with us and
11 see how things are going if you want, but please keep
12 that in mind.

13 All rise, please.

14 (Alternate jurors dismissed).

16:01:38 15 THE COURT: Please be seated, ladies and
16 gentlemen.

17 Ladies and gentlemen, let's continue on
18 with our reading.

19 We will pick up on Page 30. Start with
16:01:47 20 that concluding the part of my instructions explaining
21 the rules for considering some of the testimony and
22 evidence. Now let me finish up by explaining some things
23 about your deliberations in the jury room and your
24 possible verdicts.

16:01:58 25 The first thing that you should do in the

1 jury room is choose someone to be your foreperson. This
2 person will help to guide your discussions and will speak
3 for you here in court.

4 Once you start deliberating, do not talk to
16:02:10 5 the jury officer, or to me, or to anyone else except each
6 other about the case. If you have any questions or
7 messages, you must write them down on a piece of paper,
8 sign them, and then give them to the jury officer. The
9 officer will give them to me, and I will respond as soon
16:02:26 10 as I can. I may have to talk to the lawyers about what
11 you have asked, so it may take me some time to get back
12 to you.

13 Any questions or messages normally should
14 be sent to me through your foreperson.

16:02:37 15 One more thing about messages. Do not ever
16 write down or tell anyone how you stand on your votes.
17 For example, do not write down or tell anyone that you
18 are split six-six or eight-four or whatever your vote
19 happens to be. That should stay secret until you are
16:02:53 20 finished.

21 Remember that you must make your decision
22 based only on the evidence that you saw and heard here in
23 court. Do not try to gather any information about the
24 case on your own while you are deliberating.

16:03:06 25 For example, do not conduct any experiments

1 inside or outside the jury room. Do not bring any books,
2 like a dictionary, or anything else with you to help you
3 with your deliberations. Do not conduct any independent
4 research, reading, or investigation about the case. And
16:03:20 5 do not visit any of the places that were mentioned during
6 the trial.

7 And let me add just please keep in mind
8 that instruction about technology that I gave you at the
9 beginning of the trial.

16:03:31 10 And make your decision based only on the
11 evidence that you saw and heard here in court.

12 Now, your verdict, whether it is guilty or
13 not guilty, must be unanimous. To find a defendant
14 guilty of a particular charge, every one of you must
16:03:46 15 agree that the government has overcome the presumption of
16 innocence with evidence that proves him guilty beyond a
17 reasonable doubt.

18 To find him not guilty, every one of you
19 must agree that the government has failed to convince you
16:03:57 20 beyond a reasonable doubt.

21 Either way, guilty or not guilty, your
22 verdict must be unanimous.

23 Now that all the evidence is in and the
24 arguments are completed, you are free to talk about the
16:04:10 25 case in the jury room. In fact, it is your duty to talk

1 with each other about the evidence, and to make every
2 reasonable effort you can to reach unanimous agreement.
3 Talk with each other, listen carefully and respectfully
4 to each other's views, and keep an open mind as you
16:04:26 5 listen to what your fellow jurors have to say.

6 Try your best to work out your differences.
7 Do not hesitate to change your mind if you are convinced
8 that other jurors are right and that your original
9 position was wrong.

16:04:36 10 But do not ever change your mind just
11 because other jurors see things differently, or just to
12 get the case over with.

13 In the end, your vote must be exactly that,
14 your own vote. It's important for you to reach unanimous
16:04:49 15 agreement, but only if you can do so honestly and in good
16 conscience.

17 No one will be allowed to hear your
18 discussions in the jury room, and no record will be made
19 of what you say, so you should all feel free to speak
16:05:01 20 your minds.

21 Listen carefully to what the other jurors
22 have to say, and then decide for yourself if the
23 government has proved the defendant guilty beyond a
24 reasonable doubt.

16:05:13 25 If you decide that the government has

1 proved the defendant guilty, then it will be up to me, it
2 is my job to decide what the appropriate punishment
3 should be.

4 Again deciding what the punishment should
16:05:29 5 be is my job, not yours. It would violate your oaths as
6 jurors to even consider the possible punishment in
7 deciding your verdict.

8 Your job is to look at the evidence and
9 decide if the government has proved the defendant guilty
16:05:41 10 beyond a reasonable doubt.

11 I have prepared and will provide a verdict
12 form for each count that you should use in -- to record
13 your verdicts.

14 If you decide that the government has
16:05:53 15 proved the charge against the defendant beyond a
16 reasonable doubt, say so by having your foreperson mark
17 the appropriate place on the form. If you decide that
18 the government has not proved the charge against him
19 beyond a reasonable doubt, say so by having your
16:06:05 20 foreperson mark the appropriate place on the form.

21 Each of you should then sign the form, put
22 the date on it, and return it to me.

23 Let's take a look at those verdict forms.
24 They are right after the stipulations in the back.

16:06:22 25 We have, "Verdict form. Count 1. We, the

1 jury, in this case having been duly impaneled and sworn
2 find the defendant David W. Vickers" either guilty or not
3 guilty, and of course it continues on from there.

4 There's a place for your foreperson to
16:06:37 5 sign, date, and for each one of you then to sign.

6 Now, obviously if you take a look at these
7 forms, we have 12 at the bottom here and then a signature
8 for the foreperson. The foreperson doesn't have to sign
9 twice. Simply just point that out.

16:06:58 10 Verdict form, Count 2, that's enticement,
11 same basic form, it's guilty or not guilty. Everybody
12 has to sign, make sure it's dated.

13 And verdict form, Count 3, traveling with
14 intent to engage in illicit sexual conduct, again same
16:07:13 15 form, same protocol, guilty, not guilty, and everybody
16 has a signature line and it's dated.

17 Let's continue on with Page 36.

18 Remember that the defendant is only on
19 trial for the particular crimes charged in the
16:07:39 20 indictment. Your job is limited to deciding whether the
21 government has proved the crimes charged.

22 Remember that if you elected to take notes
23 during the trial, your notes should be used only as
24 memory aids. You should not give your notes greater
16:07:54 25 weight than your independent recollection of the

1 evidence. You should rely upon your own independent
2 recollection of the evidence or lack of evidence and you
3 should not be unduly influenced by the notes of other
4 jurors. Notes are not entitled to any more weight than
16:08:07 5 the memory or impression of each juror.

6 Whether you took notes or not, each of you
7 must form and express your own opinion as to the facts of
8 the case.

9 Now, let me finish up by repeating
16:08:22 10 something I said to you earlier. Nothing that I have
11 said or done during this trial was meant to influence
12 your decision in any way. You decide for yourselves if
13 the government has proved the defendant guilty beyond a
14 reasonable doubt.

16:08:30 15 All right. Ladies and gentlemen, that's
16 it. You will have in the jury room everything necessary
17 to reach a verdict in this case. You have all the
18 exhibits that have been admitted, the videos, the
19 recording, you will have everything and you will have the
16:08:49 20 ability to access that.

21 It should be very easy. If you have any
22 problems, let us know. We'll be happy to assist you in
23 that regard, but you will have everything in your
24 possession.

16:08:57 25 Finally, again, I want to thank you very

1 much for being part of this trial. Even though it was a
2 relatively short trial, nothing's easy. You can see
3 that. But I think by now you can see how important it is
4 that we have people come in and decide cases, even when
16:09:15 5 they're difficult.

6 Sometimes they seem to be easy. Other
7 times they appear to be difficult. It's not an easy one,
8 but you're here to give a fair trial to both sides, and
9 that's all we ask of you.

16:09:28 10 I want to thank counsel in this case,
11 Mr. McDonough, Mr. Filiatraut, both Mr. McCormacks for
12 their hard work. You just see the result for a trial.
13 You never see the hours and hours and hours that are
14 spent putting this together, and of course the hours put
16:09:47 15 into this case by both sides.

16 So I don't want to gloss over that lightly.
17 Everybody has worked very hard in this case. And again
18 we hope that you give everyone a fair shot, look at the
19 evidence very carefully and follow the instructions of
16:10:00 20 law, take everything into consideration as I have
21 discussed with you.

22 With that, I hope you're going to be proud
23 to be part of this process, as difficult as it may be,
24 because again you make us part of the United States of
16:10:14 25 America as jurors. Keep that in mind.

1 With that, good luck. This case is now in
2 your hands for a verdict.

3 (Jury out).

4 THE COURT: We're adjourned.

16:10:55 5 May I see counsel at side-bar, please?

6 (Side-bar conference had off the record).

7 (Proceedings recessed at 4:13 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Susan Trischan

/S/ Susan Trischan, Official Court Reporter

Certified Realtime Reporter

7-189 U.S. Court House

801 West Superior Avenue

Cleveland, Ohio 44113

(216) 357-7087

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